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Administrative Personnel

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PARTS 1 TO 1199

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Published by
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as a Special Edition of
the Federal Register

1934

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1986

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

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Cite this Code **CFR**

thus: **5 CFR 1.1**

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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An index to the text of "Title 3—The President" is carried within that volume.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 1, 1986

THIS TITLE

Title 5—Administrative Personnel is composed of two volumes. The parts in these volumes are arranged in the following order: Parts 1 to 1199 and Part 1200 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986, except for an amendment to Part 351 which was published on January 3, 1986.

For this volume, Denise L. Landon was Chief Editor. The Code of Federal Regulations is published under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Title 5—Administrative Personnel

(This book contains Parts 1 to 1199)

NOTE: **Title 5 of the United States Code was revised and enacted into positive law by Pub. L. 89-554, Sept. 6, 1966. New citations for obsolete references to sections of 5 U.S.C. appearing in this volume may be found in a redesignation table under Title 5, Government Organization and Employees, United States Code.**

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CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

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SUBCHAPTER A—CIVIL SERVICE RULES

PART 1—COVERAGE AND DEFINITIONS (RULE I)

Sec.
1.1 Positions and employees affected by the rules in this subchapter.
1.2 Extent of the competitive service.
1.3 Definitions.
1.4 Extent of the excepted service.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10022, Sept. 14, 1963, unless otherwise noted.

§ 1.1 Positions and employees affected by the rules in this subchapter.

The rules in this subchapter shall apply to all positions in the competitive service and to all incumbents of such positions. Except as expressly provided in the rule concerned, the rules in this subchapter shall not apply to positions and employees in the excepted service.

§ 1.2 Extent of the competitive service.

The competitive service shall include: (a) All civilian positions in the executive branch of the Government unless specifically excepted therefrom by or pursuant to statute or by the Office of Personnel Management (hereafter referred to in this subchapter as OPM) under § 6.1 of this subchapter; and (b) all positions in the legislative and judicial branches of the Federal Government and in the Government of the District of Columbia which are specifically made subject to the civil service laws by statute. OPM is authorized and directed to determine finally whether a position is in the competitive service.

§ 1.3 Definitions.

As used in the rules in this subchapter:

(a) "Competitive service" shall have the same meaning as the words "classified service", or "classified (competitive) service", or "classified civil service" as defined in existing statutes and executive orders.

(b) "Competitive position" shall mean a position in the competitive service.

(c) "Competitive status" shall mean basic eligibility to be noncompetitively selected to fill a vacancy in a competitive position. A competitive status shall be acquired by career-conditional or career appointment through open competitive examination upon satisfactory completion of a probationary period, or may be granted by statute, executive order, or the Civil Service Rules without competitive examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted without taking an open competitive examination, subject to the conditions prescribed by the Civil Service Rules and Regulations.

(d) An employee shall be considered as being in the competitive service when he has a competitive status and occupies a competitive position unless he is serving under a temporary appointment: *Provided*, that an employee who is in the competitive service at the time his position is first listed under Schedule A, B, or C shall be considered as continuing in the competitive service as long as he continues to occupy such position.

(e) "Tenure" shall mean the period of time an employee may reasonably expect to serve under his current appointment. Tenure shall be granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is to a competitive position or an excepted position.

§ 1.4 Extent of the excepted service.

(a) The excepted service shall include all civilian positions in the executive branch of the Government which are specifically excepted from the requirements of the Civil Service Act or from the competitive service by or pursuant to statute or by OPM under § 6.1 of this subchapter.

(b) "Excepted service" shall have the same meaning as the words "unclassified service", or "unclassified civil service", or "positions outside the competitive civil service" as used in existing statutes and executive orders.

(c) "Excepted position" shall have the same meaning as "unclassified position", or "position excepted by law", or "position excepted by executive order", or "position excepted by Civil Service Rule", or "position outside the competitive service" as used in existing statutes and Executive orders.

PART 2—APPOINTMENT THROUGH THE COMPETITIVE SYSTEM (RULE II)

Sec.
2.1 Competitive examinations and eligible registers.
2.2 Appointments.
2.3 Apportionment.
2.4 Probationary period.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10023, Sept. 14, 1963, unless otherwise noted.

§ 2.1 Competitive examinations and eligible registers.

(a) OPM shall be responsible for open competitive examinations for admission to the competitive service which will fairly test the relative capacity and fitness of the persons examined for the position to be filled. OPM is authorized to establish standards with respect to citizenship, age, education, training and experience, suitability, and physical and mental fitness, and for residence or other requirements which applicants must meet to be admitted to or rated in examinations.

(b) In addition to the names of persons who qualify in competitive examinations, the names of persons who have lost eligibility on a career or career-conditional register because of service in the armed forces, and the names of persons who lost opportunity for certification or who have served under career or career-conditional appointment when OPM determines that they should be given certification, may also be entered at such places on appropriate registers and under such conditions as OPM may prescribe.

(c) Whenever the Office of Personnel Management (1) is unable to certify a sufficient number of names to permit the appointing officer to consider three eligibles for appointment to a fourth-class postmaster position in accordance with the regular procedure, or (2) finds that a particular rate of compensation for fourth-class postmaster positions is too low to warrant regular competitive examinations for such positions, it may authorize appointment to any such position or positions in accordance with such procedure as may be prescribed by OPM. Persons appointed under this paragraph may acquire competitive status subject to satisfactory completion of a probationary period prescribed by OPM.

§ 2.2 Appointments.

(a) OPM shall establish and administer a career-conditional appointment system for positions subject to competitive examinations which will permit adjustment of the career service to necessary fluctuations in Federal employment, and provide an equitable and orderly system for stabilizing the Federal work force. A competitive status shall be acquired by a career-conditional appointee upon satisfactory completion of a probationary period, but the appointee shall have career-conditional tenure for a period of service to be prescribed by regulation of OPM. When an employee has completed the required period of service his appointment shall be converted to a career appointment without time limitation: *Provided*, That his career-conditional appointment shall not be converted to a career appointment if the limitation on the number of permanent employees in the Federal civil service established under paragraph (b) of this section would be exceeded thereby. Persons selected from competitive civil service registers for other than temporary appointment shall be given career-conditional appointments: *Provided*, That career appointments shall be given to the following classes of eligibles:

(1) Persons whose appointments are required by statute to be made on a permanent basis;

(2) Employees serving under career appointments at the time of selection from such registers;

(3) Former employees who have eligibility for career appointments upon reinstatement; and

(4) To the extent permitted by law, persons appointed to positions in the field service of the U.S. Postal Service for which salary rates are fixed by the act of July 6, 1945, 59 Stat. 435, as heretofore or hereafter amended and supplemented.

(b) Under the career-conditional appointment system there shall be a limit on the number of permanent employees in the Federal civil service which shall be the ceiling established by section 1310 of the Supplemental Appropriation Act, 1952 (65 Stat. 757), as amended. In the event section 1310, supra, is repealed, OPM is authorized to fix such limitation on the number of permanent employees in the Federal civil service as it finds necessary to meet the needs of the service.

(c) OPM may determine the types, duration, and conditions of indefinite and temporary appointments, and may prescribe the method for replacing persons holding such appointments.

§ 2.3 Apportionment.

Subject to such modifications as OPM finds to be necessary in the interest of good administration, appointments to positions in agencies' headquarters offices which are located within the metropolitan area of Washington, D.C., shall be made so as to maintain the apportionment of appointments among the several States, Territories, and the District of Columbia upon the basis of population.

§ 2.4 Probationary period.

Persons selected from registers of eligibles for career or career-conditional appointment and employees promoted, transferred, or otherwise assigned, for the first time, to supervisory or managerial positions shall be required to serve a probationary period under terms and conditions prescribed by the Office.

[45 FR 4337, Jan. 22, 1980]

PART 3—NONCOMPETITIVE ACQUISITION OF STATUS (RULE III)

Sec.	
3.1	Classes of persons who may noncompetitively acquire status.
3.2	Appointments without competitive examination in rare cases.
3.3	Conversion of appointments.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10023, Sept. 14, 1963, unless otherwise noted.

§ 3.1 Classes of persons who may noncompetitively acquire status.

(a) Upon recommendation by the agency concerned, and subject to such noncompetitive examination, time limits, or other requirements as OPM may prescribe the following classes of persons may acquire a competitive status without competitive examination:

(1) A person holding a permanent position when it is placed in the competitive service by statute or executive order or is otherwise made subject to competitive examination.

(2) A disabled veteran who, in a manner satisfactory to OPM, has completed a course of training in the executive branch of the Government prescribed by the Administrator of Veterans' Affairs in accordance with the act of March 24, 1943 (57 Stat. 43).

(3) An employee who has served at least two years in the immediate office of the President or on the White House Staff and who is transferred to a competitive position at the request of an agency.

(4) An employee who was serving when his name was reached for certification on a civil service register appropriate for the position in which he was serving: *Provided*, That the recommendation for competitive status is made prior to expiration of the register on which his name appears or is made during a period of continuous service since his name was reached: *Provided further*, That the register was being used for appointments conferring competitive status at the time his name was reached.

(b) Upon recommendation by the employing agency, and subject to such requirements as the Office of Personnel Management may prescribe, the following classes of handicapped employees may acquire competitive status without competitive examination:

(1) A severely physically handicapped employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

(2) A mentally retarded employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

[28 FR 10023, Sept. 14, 1963, as amended by E.O. 12125, 3 CFR, 1979 Comp., p. 375]

§ 3.2 Appointments without competitive examination in rare cases.

Subject to receipt of satisfactory evidence of the qualifications of the person to be appointed, OPM may authorize an appointment in the competitive service without competitive examination whenever it finds that the duties or compensation of the position are such, or that qualified persons are so rare, that, in the interest of good civil-service administration, the position cannot be filled through open competitive examination. Any person heretofore or hereafter appointed under this section shall acquire a competitive status upon completion of at least one year of satisfactory service and compliance with such requirements as OPM may prescribe. Detailed statements of the reasons for the noncompetitive appointments made under this section shall be published in OPM's annual reports.

§ 3.3 Conversion of appointments.

Any person who acquires a competitive status under this part shall have his appointment converted to career-conditional appointment unless he meets the service requirement for career appointment prescribed under § 2.2(a) of this subchapter.

PART 4—PROHIBITED PRACTICES (RULE IV)

Sec.
4.1 Prohibition against political activity.
4.2 Prohibition against racial, political or religious discrimination.
4.3 Prohibition against securing withdrawal from competition.

AUTHORITY: 5 U.S.C. 3301, 3302.

§ 4.1 Prohibition against political activity.

No person employed in the executive branch of the Federal Government, or any agency or department thereof, shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No person occupying a position in the competitive service shall take any active part in political management or in political campaigns, except as may be provided by or pursuant to statute. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates.

[28 FR 10024, Sept. 14, 1963]

§ 4.2 Prohibition against racial, political or religious discrimination.

No person employed in the executive branch of the Federal Government who has authority to take or recommend any personnel action with respect to any person who is an employee in the competitive service or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation, or religious beliefs of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation, or religious beliefs, except as may be authorized or required by law.

[28 FR 10024, Sept. 14, 1963]

§ 4.3 Prohibition against securing withdrawal from competition.

No person shall influence another person to withdraw from competition for any position in the competitive service for the purpose of either improving or injuring the prospects of any applicant for appointment.

[28 FR 10024, Sept. 14, 1963, as amended at 45 FR 4337, Jan. 22, 1980]

PART 5—REGULATIONS, INVESTIGATION, AND ENFORCEMENT (RULE V)

Sec.
5.1 Civil Service Regulations.
5.2 Investigation and evaluations.
5.3 Enforcement.
5.4 Information and testimony.

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 12107.

SOURCE: 45 FR 4337, Jan. 22, 1980, unless otherwise noted.

§ 5.1 Civil Service Regulations.

The Director, Office of Personnel Management, shall promulgate and enforce regulations necessary to carry out the provisions of the Civil Service Act and the Veterans' Preference Act, as reenacted in title 5, United States Code, the Civil Service Rules, and all other statutes and Executive orders imposing responsibilities on the Office. The Director is authorized, whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulation, to grant a variation from the strict letter of the regulation if such a variation is within the spirit of the regulations, and the efficiency of the Government and the integrity of the competitive service are protected and promoted. Whenever a variation is granted the Director shall note the official record to show:

(a) The particular practical difficulty or hardship involved, (b) what is permitted in place of what is required by regulations, (c) the circumstances which protect or promote the efficiency of the Government and the integrity of the competitive service, and (d) a statement limiting the application of the variation to the continuation of the conditions which gave rise to it. Like variations shall be granted whenever like conditions exist. All such decisions and information concerning variations noted in the official record shall be published promptly in a Federal Personnel Manual Letter or Bulletin and in the Director's next annual report.

§ 5.2 Investigation and evaluations.

The Director may secure effective implementation of the civil service laws, rules, and regulations, and all Executive orders imposing responsibilities on the Office by:

(a) Investigating the qualifications and suitability of applicants for positions in the competitive service. The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the civil service rules and regulations have been met.

(b) Evaluating the effectiveness of: (1) Personnel policies, programs, and operations of Executive and other Federal agencies subject to the jurisdiction of the Office, including their effectiveness with regard to merit selection and employee development; (2) agency compliance with and enforcement of applicable laws, rules, regulations and office directives; and (3) agency personnel management evaluation systems.

(c) Investigating, or directing an agency to investigate and report on, apparent violations of applicable laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.

(d) Requiring agencies to report, in a manner and at times as the Director may prescribe, personnel information the Director requests relating to civilian employees in the Executive branch of the Government, as defined by section 311 of the Civil Service Reform Act of 1978, including positions and officers and employees in the competitive, excepted and Senior Executive services, whether permanent, career-conditional, temporary or emergency.

§ 5.3 Enforcement.

(a) The Director is authorized to ensure enforcement of the civil service laws, rules, and regulations, and all applicable Executive orders, by:

(1) Instructing an agency to separate or take other action against an employee serving an appointment subject to investigation when the Director finds that the employee is disqualified for Federal employment. Where the employee or the agency appeals the Director's finding that a separation or other action is necessary, the Director may instruct the agency as to whether or not the employee should remain on duty and continue to receive pay pending adjudication of the appeal: *Provided,* That when an agency separates or takes other action against an employee pursuant to the Director's instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee's qualifications and suitability, the agency shall, upon request of the Director, restore the employee to duty or otherwise reverse any action taken.

(2) Reporting the results of evaluation or investigations to the head of the agency concerned with instructions for any corrective action necessary, including cancellation of personnel actions where appropriate. The Director's findings resulting from evaluations or investigations are binding unless changed as a result of agency evidence and arguments against them. If, during the course of any evaluation or investigation under this section, the Director finds evidence of matters which come within the investigative and prosecutorial jurisdiction of the Special Counsel of the Merit Systems Protection Board, the Director shall refer this evidence to the Special Counsel for appropriate disposition.

(b) Whenever the Director issues specific instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions.

(c) If the agency head fails to comply with the specific instructions of the Director as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the Director may certify to the Comptroller General of the United States the agency's failure to act together with such additional information as the Comptroller General may require, and shall furnish a copy of such certification to the head of the agency concerned. The individual with respect to whom such separation or other corrective action was instructed shall be entitled thereafter to no pay or only to such pay as appropriate to effectuate the Director's instructions.

§ 5.4 Information and testimony.

When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section.

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE (RULE VI)

Sec.
6.1 Authority to except positions from the competitive service.
6.2 Schedules of excepted positions.
6.3 Method of filling excepted positions and status of incumbents.
6.4 Removal of incumbents of excepted positions.
6.5 Assignment of excepted employees.
6.6 Revocation of exceptions.
6.7 Movement of persons between the civil service system and other merit systems.
6.8 Specified exceptions.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10025, Sept. 14, 1963, unless otherwise noted.

§ 6.1 Authority to except positions from the competitive service.

(a) OPM may except positions from the competitive service when it determines that appointments thereto through competitive examination are not practicable. These positions shall be listed in OPM's annual report for the fiscal year in which the exceptions are made.

(b) OPM shall decide whether the duties of any particular position are such that it may be filled as an excepted position under the appropriate schedule.

(c) Notice of OPM's decision granting authority to make appointments to an excepted position under the appropriate schedule shall be published in the FEDERAL REGISTER.

[28 FR 10025, Sept. 14, 1963, as amended by E.O. 11315, 3 CFR, 1966-1970 Comp., p. 597; E.O. 12043, 43 FR 9773, Mar. 10, 1978]

§ 6.2 Schedules of excepted positions.

OPM shall list positions that it excepts from the competitive service in Schedules A, B, and C, which schedules shall constitute parts of this rule, as follows:

Schedule A. Positions other than those of a confidential or policy-determining character for which it is not practicable to examine shall be listed in Schedule A.

Schedule B. Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination shall be listed in Schedule B. Appointments to these positions shall be subject to such noncompetitive examination as may be prescribed by OPM.

Schedule C. Positions of a confidential or policy-determining character shall be listed in Schedule C.

§ 6.3 Method of filling excepted positions and status of incumbents.

(a) The head of an agency may fill excepted positions by the appointment of persons without civil service eligibility or competitive status and such persons shall not acquire competitive status by reason of such appointment: *Provided,* That OPM, in its discretion, may by regulation prescribe conditions under which excepted positions may be filled in the same manner as competitive positions are filled and conditions under which persons so appointed may acquire a competitive status in accordance with the Civil Service Rules and Regulations.

(b) To the extent permitted by law and the provisions of this part, appointments and position changes in the excepted service shall be made in accordance with such regulations and practices as the head of the agency concerned finds necessary.

§ 6.4 Removal of incumbents of excepted positions.

Except as may be required by statute, the Civil Service Rules and Regulations shall not apply to removals from positions listed in Schedules A and C or from positions excepted from the competitive service by statute. The Civil Service Rules and Regulations shall apply to removals from positions listed in Schedule B of persons who have competitive status.

§ 6.5 Assignment of excepted employees.

No person who is serving under an excepted appointment shall be assigned to the work of a position in the competitive service without prior approval of OPM.

§ 6.6 Revocation of exceptions.

OPM may remove any position from or may revoke in whole or in part any provision of Schedule A, B, or C. Notice of OPM's decision making these changes shall be published in the FEDERAL REGISTER.

[E.O. 11315, 3 CFR, 1966-1970 Comp., p. 597, as amended by E.O. 12043, 43 FR 9773, Mar. 10, 1978]

§ 6.7 Movement of persons between the civil service system and other merit systems.

Whenever OPM and any Federal agency having an established merit system determine it to be in the interest of good administration and consistent with the intent of the civil service laws and any other applicable laws, they may enter into an agreement prescribing conditions under which persons may be moved from one system to the other and defining the status and tenure that the persons affected shall acquire upon such movement.

§ 6.8 Specified exceptions.

(a) Positions in the Department of the Interior and in the Department of Commerce whose incumbents serve as the principal representative of the Secretary in their respective regions shall be listed in Schedule C for grades not exceeding grade GS-15 of the General Schedule, and shall be designated Noncareer Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on February 15, 1975, in the competitive service shall not be affected by the foregoing provisions of this section.

(b) Positions in the Community Services Administration and ACTION whose incumbents serve as regional director or regional administrator shall be listed in Schedule C for grades not exceeding GS-15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS—15. Incumbents of these positions who are, on November 29, 1977, in the competitive service shall not be affected by the foregoing provisions of this subsection.

(c) Within the Department of Agriculture, positions in the Agriculture Stabilization and Conservation Service the incumbents of which serve as State Executive Directors and positions in the Farmers Home Administration the incumbents of which serve as State Directors or State Directors-at-Large shall be listed in Schedule C for all grades of the General Schedule.

[E.O. 11839, 40 FR 7351, Feb. 19, 1975, as amended by E.O. 11887, 40 FR 51411, Nov. 5, 1975; E.O. 12021, 42 FR 61237, Dec. 2, 1977; 47 FR 4227, Jan. 29, 1982]

PART 7—GENERAL PROVISIONS (RULE VII)

Sec.
7.1 Discretion in filling vacancies.
7.2 Personnel reports.
7.3 Reemployment rights.
7.4 Citizenship.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10025, Sept. 14, 1963, unless otherwise noted.

§ 7.1 Discretion in filling vacancies.

In his discretion, an appointing officer may fill any position in the competitive service either by competitive appointment from a civil service register or by noncompetitive selection of a present or former Federal employee, in accordance with the Civil Service Regulations. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race.

§ 7.2 Personnel reports.

Each agency shall report to OPM, in such manner and at such times as OPM may prescribe, such personnel information as it may request relating to positions and officers and employees in the competitive service and in the excepted service, whether permanent or career, career-conditional, indefinite, temporary, emergency, or subject to contract.

§ 7.3 Reemployment rights.

OPM, whenever it determines it to be necessary, shall prescribe regulations governing the release of employees (both within the competitive service and the excepted service) by any agency in the executive branch of the Government for employment in any other agency, and governing the establishment, granting, and exercise of rights to reemployment in the agencies from which employees are released.

§ 7.4 Citizenship.

(a) No person shall be admitted to competitive examination unless such person is a citizen or national of the United States.

(b) No person shall be given any appointment in the competitive service unless such person is a citizen or national of the United States.

(c) OPM may, as an exception to this rule and to the extent permitted by law, authorize the appointment of aliens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.

[E.O. 11935, 41 FR 37301, Sept. 3, 1976]

PART 8—APPOINTMENTS TO OVERSEAS POSITIONS (RULE VIII)

Sec.
8.1 Additional authority of OPM.
8.2 Appointment of United States citizens.
8.3 Appointment of persons not citizens of the United States.
8.4 Positions excepted from the application of this part.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10025, Sept. 14, 1963, unless otherwise noted.

§ 8.1 Additional authority of OPM.

In addition to authorizing the recruitment and appointment of persons to overseas positions under regulations issued under the preceding Rules, OPM may, by the regulations prescribed by it, authorize the recruitment and appointment of persons to such positions as provided in § 8.2. As used in this part, "overseas positions" means positions in foreign countries and in other areas beyond the continental limits of the United States, except as provided in § 8.4.

§ 8.2 Appointment of United States citizens.

United States citizens may be recruited overseas for appointment to overseas positions in the competitive service without regard to the competitive requirements of the Civil Service Act. Persons so recruited who meet the qualification standards and other requirements of OPM for overseas positions may be given appointments to be known as "overseas limited appointments." Such appointments shall be of temporary or indefinite duration, and shall not confer the right to acquire a competitive status. OPM may authorize overseas limited appointments for United States citizens recruited within the continental limits of the United States whenever it determines that it is not feasible to appoint from a civil-service register. Persons serving under appointments made pursuant to this section are hereby excluded from the operation of the Civil Service Retirement Act of May 29, 1930, as amended, unless eligible for retirement benefits by continuity of service or otherwise.

§ 8.3 Appointment of persons not citizens of the United States.

Persons who are not citizens of the United States may be recruited overseas and appointed to overseas positions without regard to the Civil Service Act.

§ 8.4 Positions excepted from the application of this part.

This part shall not apply to positions in Hawaii, Puerto Rico, the Virgin Islands, and Alaska, and on the Isthmus of Panama.

PART 9—EXECUTIVE ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES GS-16, 17, AND 18 OF THE GENERAL SCHEDULE (RULE IX)

IN GENERAL

Sec.
9.1 Coverage.
9.2 Filling positions covered by this part.

CAREER EXECUTIVE ASSIGNMENTS

9.3 Qualifications required for a Career Executive Assignment.
9.4 Recruitment for Career Executive Assignments.
9.5 Career Executive Assignments; selection and assignment.
9.6 Authorization of Limited Executive Assignments.
9.7 Qualifications required for a Limited Executive Assignment.
9.8 Limited Executive Assignment; selection and assignment.
9.9 Removal from a Limited Executive Assignment.
9.10 Limited Executive Assignment; change to other type of appointment.
9.11 Specified Noncareer Executive Assignments.

NONCAREER EXECUTIVE ASSIGNMENTS

9.20 Exception of positions to be filled by Noncareer Executive Assignments.
9.21 Qualifications required for a Noncareer Executive Assignment.
9.22 Noncareer Executive Assignment; selection and assignment.
9.23 Removal from a Noncareer Executive Assignment.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: E.O. 11315, 3 CFR 1966-1970 Comp., p. 597, unless otherwise noted.

IN GENERAL

§ 9.1 Coverage.

Except as otherwise provided by law, this part applies to:

(a) Positions in grades 16, 17, and 18 of the General Schedule that are in the Executive Branch, except positions excluded from the coverage of 5 U.S.C. 3324(a) by paragraphs (1), (2), and (4) thereof and any position now or hereafter excepted under Civil Service Rule VI so long as that exception remains in effect; and

(b) Persons who are given executive assignments to these positions.

§ 9.2 Filling positions covered by this part.

An appointing officer shall fill a position covered by this part by Career Executive Assignment, unless OPM authorizes a Limited Executive Assignment under § 9.6 of this part or a Noncareer Executive Assignment under § 9.20 of this part.

CAREER EXECUTIVE ASSIGNMENTS

§ 9.3 Qualifications required for a Career Executive Assignment.

After appropriate consultation with the agency concerned OPM shall establish specific qualification standards for assignment to a Career Executive Assignment.

§ 9.4 Recruitment for Career Executive Assignments.

(a) Before selecting any person for a Career Executive Assignment the appointing officer shall first consider fully employees under his agency's merit promotion program and available employees of other Federal agencies qualified pursuant to paragraph (b) of this section. Only after this consideration may the appointing officer elect to recruit applicants from outside the Federal service pursuant to paragraph (b) of this section.

(b) OPM shall be responsible for the establishment of special facilities, including special boards and panels, to recruit well-qualified persons for Career Executive Assignments in the Federal service from among employees holding Career Executive Assignments, other eligible employees, and persons outside the Federal service. The appointing officer shall use these special facilities, including special boards and panels, to recruit applicants from outside the Federal service.

(c) The procedures in this section do not apply when OPM authorizes the movement of an incumbent Career Executive to a Career Executive Assignment at the same or lower grade.

§ 9.5 Career Executive Assignments; selection and assignment.

(a) An appointing officer shall select a person for a Career Executive Assignment solely on the basis of merit and fitness. He shall not permit or consider any political test, qualification, clearance, or recommendation, and shall not discriminate on the basis of race, religion, national origin, sex, age, or physical disability.

(b) The appointing officer may make a Career Executive Assignment only after OPM has finally approved the qualifications and suitability of the person selected.

§ 9.6 Authorization of Limited Executive Assignments.

(a) OPM may authorize agencies to fill a position covered by this part by a Limited Executive Assignment when:

(1) The position is expected to be of limited duration; or

(2) The agency concerned establishes an unusual need for urgent staffing that cannot adequately be met under the procedures required for Career Executive Assignments.

(b) OPM shall specify a time limit within which an agency may use this authority and may revoke this authority at any time.

(c) OPM shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Limited Executive Assignment.

[E.O.11315, 3 CFR 1966-1970 Comp., p. 597, as amended by E.O. 12043, 43 FR 9773, Mar. 10, 1978]

§ 9.7 Qualifications required for a Limited Executive Assignment.

After appropriate consultation with the agency concerned OPM shall establish specific qualification standards for assignment to a Limited Executive Assignment.

§ 9.8 Limited Executive Assignment; selection and assignment.

An appointing officer may make a Limited Executive Assignment only after OPM has finally approved the qualifications of the person selected.

§ 9.9 Removal from a Limited Executive Assignment.

An appointing officer may remove a person from a Limited Executive Assignment when, in his judgment, the purpose of the assignment has been served or conditions warrant discontinuance of the assignment.

§ 9.10 Limited Executive Assignment; change to other type of appointment.

If a person completes five years of continuous service in an agency in a Limited Executive Assignment the appointing officer shall:

(a) Convert his assignment to a Career Executive Assignment, or to a Noncareer Executive Assignment;

(b) Give him a career appointment to a continuing position in the competitive service in grade GS-15, or below; or

(c) Separate him from the service.

§ 9.11 Specified Noncareer Executive Assignments.

(a) The regional director, regional administrator, or the Secretary's principal regional representative positions in the Departments of Health, Education, and Welfare, Housing and Urban Development, Transportation and Labor, and those positions in the Environmental Protection Agency and the Small Business Administration shall be designated Noncareer Executive Assignments; and, the Limited Executive Assignments of any incumbents of these positions on February 15, 1975, are converted to Noncareer Executive Assignments. Incumbents of these positions serving in Career Executive Assignments on February 15, 1975, shall not be affected by the foregoing provisions of this Section.

(b) The regional director or regional administrator positions in the Defense Civil Preparedness Agency and the General Services Administration shall be designated as Noncareer Executive Assignments and the Limited Executive Assignments of any incumbents of these positions on November 29, 1977, are converted to Noncareer Executive Assignments. Incumbents of these positions who are, on November 29, 1977, serving in Career Executive Assignments shall not be affected by the foregoing provisions of this section.

[E.O. 11839, 40 FR 7351, Feb. 19, 1975, as amended by E.O. 11856, 40 FR 20259, May 9, 1975; E.O. 12021, 42 FR 61237, Dec. 2, 1977]

NONCAREER EXECUTIVE ASSIGNMENTS

§ 9.20 Exception of positions to be filled by Noncareer Executive Assignments.

(a) After consulting the agency concerned, OPM may except a position from the procedures required for making Career Executive Assignments and authorize an agency to fill the position by a Noncareer Executive Assignment when it determines that there is a need for filling the position by a person who will:

(1) Be deeply involved in the advocacy of Administration programs and support of their controversial aspects;

(2) Participate significantly in the determination of major political policies of the Administration; or

(3) Serve principally as personal assistant to or adviser of a Presidential appointee or other key political figure.

(b) In determining the positions to be excepted under paragraph (a) of this section OPM shall:

(1) Limit the number of positions excepted to a relatively small proportion of the positions in the agency in grades 16, 17, and 18, taking into consideration the size of the agency and the nature of its program; and

(2) Define the area of the agency's activity in which Noncareer Executive Assignments would be appropriate and specify organizational levels, as distinguished from grade levels, below which Noncareer Executive Assignments would be inappropriate.

(c) OPM shall not except a position which has as its principal responsibility the internal management of an agency, or a position involving longstanding recognized professional duties and responsibilities resting on a body of knowledge essentially politically neutral in nature. However, a position concerned with the direction of a scientific program could be appropriately excepted when it meets the criteria set forth in paragraph (a) (1), (2), or (3) of this section.

(d) OPM shall review periodically the exceptions made under this section and after consulting the agency concerned, shall revoke an exception when the position no longer meets the criteria for exception. Civil Service Rule III, providing for the noncompetitive acquisition of competitive status, shall not apply in such a case.

(e) Notice of OPM's decision to grant or revoke authority to make Noncareer Executive Assignments shall be published in the FEDERAL REGISTER.

(f) OPM shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Noncareer Executive Assignment.

[E.O. 11315, 3 CFR 1966-1970 Comp., p. 597, as amended by E.O. 12043, 43 FR 9773, Mar. 10, 1978]

§ 9.21 Qualifications required for a Noncareer Executive Assignment.

After appropriate consultation with the agency concerned OPM shall establish specific qualification standards for assignment to a Noncareer Executive Assignment. In addition, as a qualification for continuance in a Noncareer Executive Assignment, the incumbent must continue to maintain the qualifications and relationships that are required for the particular Noncareer Executive Assignment.

§ 9.22 Noncareer Executive Assignment; selection and assignment.

An appointing officer may make a Noncareer Executive Assignment only after OPM has finally approved the qualifications of the person selected. He shall inform each person selected of the qualifications required under § 9.21 of this part for assignment to and continuance in a Noncareer Executive Assignment.

§ 9.23 Removal from a Noncareer Executive Assignment.

An appointing officer shall remove a person from a Noncareer Executive Assignment when the person's qualifications or relationships required fo the assignment change or cease t exist.

SUBCHAPTER B—CIVIL SERVICE REGULATIONS

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

Subpart A—Posting Notices of New Regulations

Sec.
110.101 OPM responsibilities.
110.102 Agency responsibilities.

Subpart B—Information Collection Requirements

110.201 OMB control numbers.

Subpart A—Posting Notices of New Regulations

§ 110.101 OPM responsibilities.

OPM will issue special Federal Personnel Manual (FPM) bulletins to provide notice of its new regulations. Each special bulletin will transmit:

(a) A reprint of the notice of rulemaking which appears in the FEDERAL REGISTER.

(b) A posting notice which briefly explains the nature of the change, and provides a place for the receiving office to indicate where the full text of the FEDERAL REGISTER notice will be available for review locally.

(5 U.S.C. 1103)

[44 FR 67626, Nov. 27, 1979]

§ 110.102 Agency responsibilities.

(a) *Making regulations available for review.* Offices receiving the reprints of notices of rulemaking described in § 110.101(a) will make them available for review upon request. Each office will complete the posting notice described in § 110.101(b) to indicate where and how requests to review these materials should be made.

(b) *Posting locations and supplemental announcements.* Once completed, posting notices will be displayed in a prominent place. Agencies should choose the posting location which best fits their physical layout. Agencies may, at their discretion, supplement these postings with announcements of new regulations in employee newsletters and use other communication methods to provide notice of regulatory changes. The basic requirement to post the notice continues, however, even if supplemental announcement methods are used.

(c) *Posting after the Federal Register comment date passes.* The public comment period on proposed regulations begins when a notice of proposed rulemaking is published in the FEDERAL REGISTER, not with the posting of the notice described in § 110.101(b). The purpose of the § 110.101(b) notice is solely to inform managers and employees of changes. Agencies are required to post the § 110.101(b) notice even if the formal deadline for comments shown in the preamble of the FEDERAL REGISTER notice of rulemaking has passed. Agencies should make every reasonable effort to minimize delays in distributing the special Federal Personnel Manual bulletins described in § 110.101 to their field offices.

(d) *No fixed posting period.* There are no minimum or maximum time limits on displaying the notice described in § 110.101(b) of this section. Each office receiving a notice for posting should choose the posting period which provides the best opportunity to inform managers and employees of regulatory changes based upon office layout, geographic dispersion of employees and other local factors.

(5 U.S.C. 1103)

[44 FR 67626, Nov. 27, 1979]

Subpart B—Information Collection Requirements

§ 110.201 OMB control numbers.

(a) Under section 3507(f) of the Paperwork Reduction Act of 1980 (Pub. L. 96-551), control numbers assigned by the Office of Management and Budget must be displayed with agency information collection requirements.

(b) This paragraph displays OMB-assigned control numbers for information collection requirements contained within chapter 1 of this title.

5 CFR citation	OMB control No.
§ 213.3102(ii)	3206-0082
§ 530.304	3206-0100
§ 532.105	3206-0036
§ 536.306	3206-0090
Part 734	3206-0092
Part 734	3206-0098
§ 831.101	3206-0033
§ 831.104	3206-0059
§ 831.104	3206-0061
§ 831.501(b)	3206-0121
§ 831.502(e)	3206-0034
§ 831.601	3206-0032
§ 831.601	3206-0042
§ 831.601	3206-0088
§ 831.601	3206-0096
§ 831.601	3206-0099
§ 831.601	3206-0103
§ 831.1904	3206-0120
§ 831.2002	3206-0128
§ 890.202	3206-0101
§ 891.104(f)	3206-0017
§ 891.104(f)	3206-0104
§ 891.201	3206-0102

(5 U.S.C. 1103, 1104: 5 CFR Part 5.2 (c) and (d); 44 U.S.C. 3507(f); 5 CFR Part 1320)

[49 FR 7553, Mar. 1, 1984]

PART 151—POLITICAL ACTIVITY OF STATE OR LOCAL OFFICERS OR EMPLOYEES

GENERAL PROVISIONS

Sec.
151.101 Definitions.

PERMISSIBLE ACTIVITIES

151.111 Permissible activities.

PROHIBITED ACTIVITIES

151.121 Use of official authority; coercion; candidacy; prohibitions.
151.122 Candidacy; exceptions.

AUTHORITY: 5 U.S.C. 1302, 1501-1508, as amended.

SOURCE: 35 FR 16783, Oct. 30, 1970, unless otherwise noted.

NOMENCLATURE CHANGES: 41 FR 48110, Nov. 2, 1976.

GENERAL PROVISIONS

§ 151.101 Definitions.

In this part:

(a) "State" means a State or territory or possession of the United States.

(b) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof.

(c) "Federal agency" means an executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System;

(d) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency but does not include—

(1) An individual who exercises no functions in connection with that activity.

(2) An individual employed by an educational or research institution, establishment, agency, or system, which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

(e) "Political party" means a National political party, a State political party, and an affiliated organization.

(f) "Election" includes a primary, special, and general election.

(g) "Nonpartisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector receives votes in the last preceding election at which Presidential electors were selected.

(h) "Partisan" when used as an adjective refers to a political party.

(i) "Elective office" means any office which is voted upon at an election as defined at § 151.101(f), above, but does not include political party office.

[40 FR 42733, Sept. 16, 1975]

PERMISSIBLE ACTIVITIES

§ 151.111 Permissible activities.

(a) All State or local officers or employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this part. A State or local officer or employee may participate in all political activity not specifically restricted by law and this part, including candidacy for office in a nonpartisan election and candidacy for political party office.

[40 FR 42733, Sept. 16, 1975]

PROHIBITED ACTIVITIES

§ 151.121 Use of official authority; coercion; candidacy; prohibitions.

A State or local officer or employee may not—

(a) Use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office; or

(b) Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a political party, committee, organization, agency, or person for a political purpose.

(c) Be a candidate for elective public office in a partisan election.

[40 FR 42733, Sept. 16, 1975]

§ 151.122 Candidacy; exceptions.

Section 151.121(c) does not apply to—

(a) The Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(b) The Mayor of a city;

(c) A duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil service system;

(d) An individual holding elective office;

(e) Activity in connection with a nonpartisan election; or

(f) Candidacy for a position of officer of a political party, delegate to a political party convention, member of a National, State, or local committee of a political party, or any similar position.

[40 FR 42733, Sept. 16, 1975, as amended at 40 FR 47101, Oct. 8, 1975]

PART 175—OPM MANDATORY REVIEW OF CLASSIFIED DOCUMENTS

Sec.
175.101 Policy.
175.102 Requests for the declassification of documents.

AUTHORITY: E.O. 12065, 43 FR 28949.

§ 175.101 Policy.

The Office of Personnel Management bases its procedures for handling national security information on Executive Order 12065, "National Security Information," and Information Security Oversight Office Directive No. 1 concerning national security information.

[45 FR 995, Jan. 4, 1980]

§ 175.102 Requests for the declassification of documents.

Any Federal agency, Government employee or member of the public has the right to request a mandatory review of any classified document, held by the Office of Personnel Management, which was classified for national security purposes by the Civil Service Commission. The Office of Personnel Management does not have the authority to classify documents.

(a) Requests for mandatory declassification review should be addressed to the Director, Office of Management, or the designee of the Director, who will act on requests within 60 days. Requests need not be made in any special form but shall, as specified in section 3-501 of the Executive order, reasonably describe the information.

(b) Based upon the review, the document, or any reasonably segregable portion thereof that no longer requires protection under the Executive order, shall be declassified and released unless withholding is otherwise warranted under applicable law.

(c) No OPM official will refuse to confirm the existence or non-existence of any document requested under the Freedom of Informaton Act or the mandatory review provisions of the Executive order, unless the fact of its existence or non-existence would itself be classifiable under the Executive order. OPM Administrative Manual chapter 22, covering OPM policies and procedures relating to classified information or material is available for inspection by the public in the OPM Library, Room 5H27, 1900 E. St., N.W., Washington, D.C., or in one of the 10 OPM regional offices in the following cities: Atlanta, Boston, Chicago, Dallas, Denver, New York, Philadelphia, St. Louis, San Francisco and Seattle.

[45 FR 995, Jan. 4, 1980]

PART 177—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Sec.

177.101 Scope of regulations.
177.102 Administrative claim; when presented; appropriate OPM office.
177.103 Administrative claim; who may file.
177.104 Investigations.
177.105 Administrative claim; evidence and information to be submitted.
177.106 Authority to adjust, determine, compromise, and settle.
177.107 Limitations on authority.
177.108 Referral to Department of Justice.
177.109 Final denial of claim.
177.110 Action on approved claim.

AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11.

SOURCE: 33 FR 12405, Sept. 4, 1968, unless otherwise noted.

§ 177.101 Scope of regulations.

This part applies only to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of OPM (referred to in this part as an "employee") while acting within the scope of his office or employment.

§ 177.102 Administrative claim; when presented; appropriate OPM office.

(a) For the purpose of this part, a claim is deemed to have been presented when OPM receives, at a place designated in paragraph (b) or (c) of this section, an executed "Claim for Damage or Injury", Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to OPM, but which was mistakenly addressed to or filed with another Federal agency, is deemed to be presented to OPM as of the date that the claim is received by OPM. If a claim is mistakenly addressed to or filed with OPM, OPM shall forthwith transfer it to the appropriate Federal agency, if ascertainable, or return it to the claimant.

(b) Except as provided in paragraph (c)(1) of this section, a claimant shall mail or deliver his claim to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

(c) (1) When a claim is for $500 or less and does not involve a personal injury, the claimant shall mail or deliver it to the Director of the OPM's regional office which employs the individual whose negligence or wrongful act or omission is alleged to have caused the loss or injury complained of. In these cases, the address of the appropriate Regional Director is one of the following:

New England Region, John W. McCormack, Post Office and Courthouse Building, Boston MA 02109 (formerly Boston Region).

Eastern Region, New Federal Building, 26 Federal Plaza, New York, NY 10007 (formerly New York Region).

Mid-Atlantic Region, William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106 (formerly Philadelphia Region).

Southeast Region, Richard B. Russell, Federal Building, 75 Spring Street, SW, Atlanta, GA 30303 (formerly Atlanta Region).

Great Lakes Region, John C. Kluczynski, Federal Building, 29th Floor, 230 South Dearborn Street, Chicago, IL 60604 (formerly Chicago Region).

Southwest Region, 100 Commerce Street, Dallas, TX 75242 (formerly Dallas Region).

Mid-Continent Region, 1256 Federal Building, 1520 Market Street, St. Louis, MO 63103 (formerly St. Louis Region).

Rocky Mountain Region, Building 20, Denver Federal Center, Denver, CO 80225 (formerly Denver Region).

Western Region, 525 Market Street, 23rd Floor, San Francisco, CA 94105 (formerly San Francisco Region).

Northwest Region, Federal Building, 26th Floor, 915 Second Avenue, Seattle, WA 98174 (formerly Seattle Region).

(2) If the OPM employee's office of employment is the Central Office of OPM or is not known and not reasonably ascertainable, the claimant shall mail or deliver his claim to the Office

of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

[33 FR 12405, Sept. 4, 1968, as amended at 44 FR 65025, Nov. 9, 1979]

§ 177.103 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 177.104 Investigations.

OPM may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 177.105 Administrative claim; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support on the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent on him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by OPM or another Federal agency. OPM shall make available to the claimant a copy of the report of the examining physician on written request by the claimant, if he has, on request, furnished the report

referred to in the first sentence of this subparagraph and has made or agrees to make available to OPM any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 177.106 Authority to adjust, determine, compromise, and settle.

(a) The General Counsel of OPM, or his designee, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of section 2672 of title 28, United States Code, and this part.

(b) Notwithstanding the delegation of authority in paragraph (a) of this section, a Regional Director is delegated authority, to be exercised in his discretion, to consider, ascertain, adjust, determine, compromise, and settle under the provisions of section 2672 of title 28, United States Code, and this part any claim for $500 or less which is based on the alleged negligence or wrongful act or omission of an employee of his Region, except when:

(1) There are personal injuries to either Government personnel or individuals not employed by the Government; or

(2) All damage to Government property or to property being used for OPM, or both, is more than $500, or all damage to non-Government property being used by individuals not employed by the Government is more than $500.

(Pub. L. 95-454; Reorganization Plan No. 2 of 1978)

[33 FR 12405, Sept. 4, 1968, as amended at 44 FR 76747, Dec. 28, 1979]

§ 177.107 Limitations on authority.

(a) An award, compromise, or settlement of a claim under this part in excess of $25,000 may be effected only with the advance written approval of the Attorney General or his designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice when, in the opinion of the General Counsel of OPM, or his designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and OPM is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a relat-

ed claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice when OPM is informed or is otherwise aware that the United States or an employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 177.108 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 177.107, the referral or request shall be transmitted to the Department of Justice by the General Counsel of OPM or his designee.

§ 177.109 Final denial of claim.

Final denial of an administrative claim under this part shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with OPM action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 177.110 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant's execution of (1) a "Claim for Damage or Injury", Standard Form 95, (2) a claims settlement agreement, and (3) a "Voucher for Payment", Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative, of an award, compromise, or settlement made under section 2672 or 2677 of title 28, United States Code, is final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

PART 179—CLAIMS COLLECTION STANDARDS

Sec.
179.101 General collection standards.
179.102 Delegation of authority.

§ 179.101 General collection standards.

The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR Part 101 et seq.), apply to the administrative claim collection activities of OPM.

(Sec. 3, 80 Stat. 309; 31 U.S.C. 952)

[33 FR 12406, Sept. 4, 1968]

§ 179.102 Delegation of authority.

The Associate Director for Compensation shall act on claims that arise under subchapter III of chapter 83, chapter 87 and Chapter 89 of title 5, United States Code, the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act (58 Stat. 257), and the Lighthouse Service Widow's Annuity Act (64 Stat. 465). The General Counsel shall act on all other claims.

(Sec. 3, 80 Stat. 309; 31 U.S.C. 952; Pub. L. 95-454; Reorganization Plan No. 2 of 1978)

[33 FR 12406, Sept. 4, 1968, as amended at 44 FR 76747, Dec. 28, 1979]

PART 180—EMPLOYEES' PERSONAL PROPERTY CLAIMS

Sec.
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180.103 Time limitations.
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180.107 Claims procedure.
180.108 Settlement of claims.

AUTHORITY: Sec. 3, 78 Stat. 767, as amended; 31 U.S.C. 241.

SOURCE: 43 FR 47163, Oct. 13, 1978, unless otherwise noted.

§ 180.101 Scope and purpose.

(a) The Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 240 to 243, authorizes the Director, Office of Personnel Management to settle and pay (including replacement in kind) claims of officers and employees of OPM, amounting to not more than $15,000, for damage to or loss of personal property incident to their service. Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquistion and use of the property, and whether possession or use by the claimant at the time of damage or loss was incident to service.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for damage or loss is made only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individuals possess excessive quantities of items, or expensive items, they should have such property privately insured.

§ 180.102 Claimants.

(a) The following are proper claimants:

(1) Officers and employees of OPM;

(2) Former officers and employees of OPM whose claims arose out of incidents which occurred before their separation;

(3) The authorized agent or legal representative of persons in §§ 180.102(a)(1) and 180.102(a)(2);

(4) Survivors of persons in §§ 180.102(a)(1) and 180.102(a)(2) in the following order of precedence:

(i) Spouse,

(ii) Children,

(iii) Father or mother, or both,

(iv) Brothers or sisters, or both.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 180.103 Time limitations.

A claim must be presented in writing within 2 years after it accrues, except during war or armed conflict. If war or armed conflict occurs within the 2-year period following accrual, when claimant shows good cause, the claim may be presented within 2 years after the cause ceases to exist but not more than 2 years after termination of the war or armed conflict. A claim accrues when loss or damage is or should have been discovered by claimant even though such loss or damage occurred at a prior time.

§ 180.104 Allowable claims.

(a) A claim may be allowed only if:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, claimant's agent, a member of claimant's family, or claimant's private employee (the standard to be applied is that of reasonable care under the circumstances);

(2) The possession of the property damaged or lost and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this part shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss or solely because the claimant was not legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in § 180.104(a) and the other provisions of this part, any claim for damage to or loss of personal property incident to service with OPM may be considered and allowed. The following are examples of the principal types of claims which may be allowed. These examples are not exclusive and other types of claims may be allowed unless excluded by § 180.106:

(1) *Property damaged or lost in quarters.* Claims may be allowed for damage to or loss of property located at:

(i) Quarters within the 50 States and the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States;

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a local inhabitant; or

(iii) Any warehouse, office, working area, or other place (except quarters) authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to or loss of property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Motor vehicles.* Claims may be allowed for automobiles and other motor vehicles damaged or lost in oversea shipments provided by the Government. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels, or by Government bills of lading on commercial vessels, and includes storage, unloading, and offloading incident thereto. Other claims for damage to or loss of automobiles and other motor vehicles may be allowed only when use of the vehicle on a non-reimbursable basis was required by the claimant's supervisor.

(4) *Mobile homes.* Claims may be allowed for damage to or loss of mobile homes and their contents under the provisions of § 180.104(c)(2). Claims for structural damage to mobile homes, other than that caused by collision, and damage to contents of mobile homes resulting from such structural damage must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to or loss of tires mounted on mobile homes may be allowed only in cases of collision, theft, or vandalism.

(5) *Money.* Claims for money in an amount that is determined to be reasonable for the claimant to possess at the time of the loss are payable:

(i) Where personal funds were accepted by responsible Government personnel with apparent authority to receive them for safekeeping deposit, transmittal, or other authorized disposition, but were neither applied as directed by the owner nor returned;

(ii) When lost incident to a marine or aircraft disaster;

(iii) When lost by fire, flood, hurricane, or other natural disaster;

(iv) When stolen from the quarters of the claimant where it is conclusively shown that the money was in a locked container and that the quarters themselves were locked;

(v) When taken by force from the claimant's person.

(6) *Clothing.* Claims may be allowed for clothing and accessories worn on the person which are damaged or lost:

(i) During the performance of official duties in an unusual or extraordinary-risk situation;

(ii) In cases involving emergency action required by natural disaster such as fire, flood, hurricane, or by enemy or other belligerent action;

(iii) In cases involving faulty equipment or defective furniture maintained by the Government and used by the claimant as required by the job situation; or

(iv) When using a motor vehicle.

(7) *Property used for benefit of the Government.* Claims may be allowed for damage to or loss of property (except motor vehicles) used for the benefit of the Government at the re-

quest of, or with the knowledge and consent of, superior authority or by reason of necessity.

(8) *Enemy action or public service.* Claims may be allowed for damage to or loss of property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(9) *Marine or aircraft disaster.* Claims may be allowed for personal property damaged or lost as a result of marine or aircraft disaster or accident.

(10) *Government property.* Claims may be allowed for property owned by the United States only when the claimant is financially responsible to an agency of the Government other than OPM.

(11) *Borrowed property.* Claims may be allowed for borrowed property that has been damaged or lost.

§ 180.105 Claims not allowed.

(a) A claim is not allowable if:

(1) The damage or loss was caused wholly or partly by the negligent or wrongful act of the claimant, claimant's agent, claimant's employee, or a member of claimant's family;

(2) The damage or loss occurred in quarters occupied by the claimant within the 50 States and the District of Columbia that were not assigned to the claimant or otherwise provided in kind by the United States;

(3) Possession of the property lost or damaged was not incident to service or not reasonable or proper under the circumstances.

(b) In addition to claims falling within the categories of § 180.105(a), the following are examples of claims which are not payable:

(1) *Claims not incident to service.* Claims which arose during the conduct of personal business are not payable.

(2) *Subrogation claims.* Claims based upon payment or other consideration to a proper claimant are not payable.

(3) *Assigned claims.* Claims based upon assignment of a claim by a proper claimant are not payable.

(4) *Conditional vendor claims.* Claims asserted by or on behalf of a conditional vendor are not payable.

(5) *Claims by improper claimants.* Claims by persons not designated in § 180.102(a) are not payable.

(6) *Small items of substantial value.* Claims are not payable for money or for small articles of substantial value, such as watches or expensive jewelry, when shipped with household goods or as unaccompanied baggage.

(7) *Articles of extraordinary value.* Claims are not payable for expensive articles of gold, silver, other precious metals, paintings, antiques other than bulky furnishings, relics, and other articles of extraordinary value when shipped with household goods by ordinary means or as unaccompanied baggage at normal released valuation. Claims for such articles are payable when their loss is incident to shipment by expedited mode in accordance with current joint travel regulations. This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, provided that reasonable protection or security measures have been taken by the claimant.

(8) *Articles acquired for other persons.* Claims are not payable for articles intended directly or indirectly for persons other than the claimant or members of the claimant's immediate household. This prohibition includes articles acquired at the request of others and articles for sale.

(9) *Property used for business.* Claims are not payable for property normally used for business or profit.

(10) *Unserviceable property.* Claims are not payable for wornout or unserviceable property.

(11) *Violation of law or directive.* Claims are not payable for property acquired, possessed, or transported in violation of law, regulation, or other directive. This does not apply to limitations imposed on the weight of shipments of household goods.

(12) *Intangible property.* Claims are not payable for intangible property such as bank books, checks, promissory notes, stock certificates, bonds, bills

of lading, warehouse receipts, baggage checks, insurance policies, money order, and traveler's checks.

(13) *Government property.* Claims are not payable for property owned by the United States unless the claimant is financially responsible for the property to an agency of the Government other than OPM.

(14) *Motor vehicles.* Claims for motor vehicles, except as provided for by § 180.104(c)(3), will ordinarily not be paid. However, in exceptional cases, meritorius claims for damage to or loss of motor vehicles may be recommended to the Office of the General Counsel for consideration and approval for payment.

(15) *Enemy property.* Claims are not payable for enemy property, including war trophies.

(16) *Losses recoverable from carrier.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from a carrier, except as permitted under § 180.106.

(17) *Losses recoverable from insurer.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from an insurer, except as permitted under § 180.106.

(18) *Losses recoverable from contractor.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable under contract, except as permitted under § 180.106.

(19) *Fees for estimates.* Claims are not normally payable for fees paid to obtain estimates of repair in conjuction with submitting a claim under this part. However, where, in the opinion of the approving authority, the claimant could not obtain an estimate without paying a fee, such a claim may be considered in an amount reasonable in relation to the value or the cost of repairs of the articles involved, provided that the evidence furnished clearly indicates that the amount of the fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(20) *Items fraudulently claimed.* Claims are not payable for items fraudulently claimed. When investigation discloses that a claimant, claimant's agent, claimant's employee, or member of claimant's family has intentionally misrepresented an item claimed as to cost, condition, cost to repair, etc., the item will be disallowed in its entirety even though some actual damage has been sustained. However, if the remainder of the claim is proper it will be paid. This does not preclude appropriate disciplinary action if warranted.

§ 180.106 Claims involving carriers and insurers.

(a) Claimants must comply with the following before presenting claims involving a carrier or insurer:

(1) Whenever property is damaged or lost while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a claim against the Government. The claimant may present a claim to the Government immediately after making demand on the carrier.

(2) Whenever property which is damaged or lost incident to the claimant's service is insured in whole or in part, the claimant must make a written demand against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of a claim against the Government. The claimant may present a claim to the Government immediately after making demand on the insurer.

(b) If the claimant fails to make the required demand on the carrier or insurer or make reasonable efforts to collect the amount recoverable, the amount payable under the provisions of these regulations shall be reduced by the maximum amount recoverable. However, no deduction will be made if the circumstances of the claimant's service were such as to preclude timely filing of the claim with the carrier or insurer and it is determined that a demand would have been impracticable or unavailing in any event.

(c) When a claim is paid by OPM, the claimant will assign to the United

States, to the extent of any payment on the claim accepted by claimant, all rights, title, and interest in any claim against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. On request, the claimant also will furnish such evidence as may be required to enable the United States to enforce the claim.

(d) After payment of a claim by the United States, if the claimant receives any payment from a carrier, contractor, insurer, or other third party, the claimant will pay the proceeds to the United States to the extent of the payment received by the claimant from the United States.

§ 180.107 Claims procedure.

(a) *Filing a claim.* Claims not exceeding $500 shall be filed with the appropriate bureau or regional director. Claims in excess of $500 shall be filed with the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415. Claims shall be in writing, using G.C. Form 33 when available, and shall contain as a minimum:

(1) Name, address, and place of employment of the claimant;

(2) Place and date of the damage or loss;

(3) A brief statement of the facts and circumstances surrounding the damage or loss;

(4) Cost, date, and place of acquisition of each piece of property damaged or lost;

(5) Two itemized repair estimates, or value estimates, whichever is applicable;

(6) Copies of police reports, if applicable;

(7) A statement from the claimant's supervisor that the loss was incident to service;

(8) A statement that the property was or was not insured;

(9) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept, a statement as to what security precautions were taken to protect the property involved;

(10) With respect to claims involving property being used for the benefit of the Government, a statement by the claimant's supervisor that the claimant was required to provide such property or that the claimant's providing it was in the interest of the Government; and

(11) Other evidence as may be required.

(b) *Single claim.* A single claim shall be presented for all lost or damaged property resulting from the same incident. If this procedure causes a hardship, the claimant may present an initial claim with notice that it is a partial claim, an explanation of the circumstances causing the hardship, and an estimate of the balance of the claim and the date it will be submitted. Payment may be made on a partial claim if the approving authority determines that a genuine hardship exists.

(c) *Claims investigator.* When a claim is filed, the appropriate associate or regional director, or the General Counsel, shall appoint a claims investigator to evaluate the claim and make a recommendation as to its disposition. Where the cost to repair damaged property does not exceed $100 per item and the claims investigator has inspected the damaged property, the claimant and the approving authority may agree upon a reasonable amount to be claimed for repair of an individual item in lieu of an independent estimate by a qualified repairman. In such a case, the claims investigator and the approving authority will certify that the property has been examined and that the amount claimed is a reasonable allowance for the cost of the repairs.

(d) *Loss in quarters.* Claims for property loss in quarters or other authorized places should be accompanied by a statement indicating:

(1) Geographical location;

(2) Whether the quarters were assigned or provided in kind by the Government;

(3) Whether the quarters are regularly occupied by the claimant;

(4) Name of the authority, if any, who designated the place of storage of the property if other than quarters;

(5) Measures taken to protect the property; and

(6) Whether the claimant is a local inhabitant.

(e) *Loss by theft or robbery.* Claims for property loss by theft or robbery should be accompanied by a statement indicating:

(1) Geographical location;

(2) Facts and circumstances surrounding the loss, including evidence of the crime such as breaking and entering, capture of the thief or robber, or recovery of part of the stolen goods; and

(3) Evidence that the claimant exercised due care in protecting the property prior to the loss, including information as to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(f) *Transportation losses.* Claims for transportation losses should be accompanied by the following:

(1) Copies of orders authorizing the travel, transportation, or shipment or a certificate explaining the absence of orders and stating their substance;

(2) Statement in cases where property was turned over to a shipping officer, supply officer, or contract packer indicating:

(i) Name (or designation) and address of the shipping officer, supply officer, or contract packer;

(ii) Date the property was turned over;

(iii) Inventoried condition when the property was turned over;

(iv) When and where the property was packed and by whom;

(v) Date of shipment;

(vi) Copies of all bills of lading, inventories, and other applicable shipping documents;

(vii) Date and place of delivery to the claimant;

(viii) Date the property was unpacked by the carrier, claimant, or Government;

(ix) Statements of disinterested witnesses as to the condition of the property when received and delivered, or as to handling or storage;

(x) Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss;

(xi) Whether the last common carrier or local carrier was given a clear receipt, except for concealed damages;

(xii) Total gross, tare, and net weight of shipment;

(xiii) Insurance certificate or policy if losses are privately insured;

(xiv) Copy of the demand on carrier or insured, or both, when required, and the reply, if any;

(xv) Action taken by the claimant to locate missing baggage or household effects, including related correspondence.

(g) *Marine or aircraft disaster.* Claims for property losses due to marine or aircraft disaster should be accompanied by a copy of orders or other evidence to establish the claimant's right to be, or to have property, on board.

(h) *Enemy action, public disaster, or public service.* Claims for property losses due to enemy action, public disaster, or public service should be accompanied by:

(1) Copies of orders or other evidence establishing the claimant's required presence in the area involved, and

(2) A detailed statement of facts and circumstances showing an applicable case enumerated in § 180.104(c)(8).

(i) *Property used for benefit of Government.* Claims for property loss when the property was used for the benefit of the Government should be accompanied by:

(1) A statement from the proper authority that the property was supplied by the claimant in the performance of official business at the request of, or with the knowledge and consent of, superior authority or by reason of necessity; and

(2) If the property being used for the benefit of the Government was damaged or lost while not in use, evidence that the loss occurred in an authorized storage area.

(j) *Money.* Claims for loss of money deposited for safekeeping, transmittal, or other authorized disposition, should be accompanied by:

(1) Name, grade, and address of the person or persons who received the money and any others involved;

(2) Name and designation of the authority who authorized such person or persons to accept personal funds, and the disposition required; and

(3) Receipts and written sworn statements explaining the failure to ac-

count for funds or return them to the claimant.

(k) *Motor vehicles in transit.* Claims for damage to motor vehicles in transit should be accompanied by a copy of orders or other available evidence to establish the claimant's lawful right to have the property shipped and evidence to establish damage in transit.

[43 FR 47163, Oct. 13, 1978, as amended at 44 FR 76747, Dec. 28, 1979]

§ 180.108 Settlement of claims.

(a) *Authority.* Associate Directors and Regional Directors are authorized to settle and pay any claim not exceeding $500 and arising under this part. The General Counsel is authorized to settle and pay any claim not exceeding $15,000 and arising under this part. Unless cognizable under § 180.104 (c)(3), claims for damage to or loss of motor vehicles may be settled and paid only by the General Counsel.

(b) *Redelegation.* The approving authorities may establish such procedures and make such redelegations as may be required to fulfill the objectives of this part.

(c) *Cost or value.* The amount awarded on any item of property will not exceed the cost of the item (either the price paid in cash or property) or the value at the time of acquisition if not acquired by purchase or exchange. The amount payable will be determined by applying the principles of depreciation to the adjusted dollar value or other base price of property lost or damaged beyond economical repair; by allowing the cost of repairs when an item is economically repairable, provided the cost of repairs does not exceed the depreciated value of the item; and by deducting salvage value, if appropriate.

(d) *Depreciation.* Depreciation in value of an item is determined by considering the type of article involved, its cost, condition when damaged beyond economical repair or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(e) *Appreciation.* There will be no allowance for appreciation in the value of the property except that the cost of the item may be adjusted to reflect changes in the purchasing power of the dollar before depreciation is computed. Appreciation will not be allowed solely because the loss occurred or the claimant now resides in an area remote from the place of purchase of the property.

(f) *Expensive articles.* Allowance for expensive items (including heirlooms and antiques) or for items purchased at unreasonably high prices will be based on the fair and reasonable purchase price for substitute articles of a similar nature.

(g) *Acquisition.* Allowance for articles acquired by barter will not exceed the cost of the articles tendered in barter. No reimbursement will be made for articles acquired in black market or other prohibited activities.

(h) *Replacement.* Replacement of damaged or lost property may be made in kind whenever appropriate.

(i) *Amount allowable.* Subject to the limitations of §§ 180.108(c) through 180.108(h), the amount allowable in settlement of a claim is either:

(1) The depreciated value immediately prior to damage or loss of property damaged beyond economical repair or lost, less any salvage value; or

(2) The reasonable cost of repairs when property is economically repairable, provided that the cost of repairs does not exceed the depreciated value.

(j) *Notification.* The approving authority shall notify the claimant in writing of the action taken on the claim and, if the claim is disapproved or only partially approved, the reasons therefor.

(k) *Carrier or insurer.* In the event a claim submitted against a carrier or insurer under § 180.106 had not been settled before settlement of a claim against the Government under this part, the approving authority shall notify such carrier or insurer to pay the proceeds of the claim to OPM to the extent OPM has made payment to the claimant.

(l) *Review.* The action of the approving authority is final; however, the decision may be reconsidered if the claimant so requests and submits a written explanation why reconsideration is appropriate.

(m) *Attorney's fees.* No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating this or any other provision of sections 240 to 243 of title 31, United States Code, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1000.

[43 FR 47163, Oct. 13, 1978, as amended at 44 FR 76747, Dec. 28, 1979]

PART 210—BASIC CONCEPTS AND DEFINITIONS (GENERAL)

Subpart A—Applicability of Regulations; Definitions

Sec.
210.101 Applicability of various parts of regulations.
210.102 Definitions.

Subpart A—Applicability of Regulations; Definitions

§ 210.101 Applicability of various parts of regulations.

(a) *General.* In most parts, the applicability of the part is stated specifically in the part or is otherwise apparent from the substance of the part.

(b) *Parts 315 through 339.* Parts 315 through 339 of this chapter apply to all positions in the competitive service and to all incumbents of those positions; and, except as specified by or in an individual part, these parts do not apply to positions in the excepted service or to incumbents of those positions.

(5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218)

[33 FR 12407, Sept. 4, 1968, as amended at 44 FR 45587, Aug. 3, 1979]

§ 210.102 Definitions.

(a) The definitions in paragraph (b) of this section apply throughout this chapter, except when a defined term is specifically modified in or specifically defined for the purpose of a particular part.

(b) In this chapter:

(1) "Appointing officer" means a person having power by law, or by lawfully delegated authority, to make appointments to positions in the service of the Federal Government or the government of the District of Columbia.

(2) "OPM" means the Office of Personnel Management.

(3) "Days", unless otherwise defined or limited, means calendar days and not workdays. In computing a period of time prescribed in this chapter, the day of the action or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday.

(4) "Demotion" means a change of an employee, while serving continuously within the same agency:

(i) To a lower grade when both the old and the new positions are under the General Schedule or under the same type graded wage schedule; or

(ii) To a position with a lower rate of pay when both the old and the new positions are under the same type ungraded wage schedule, or are in different pay method categories.

(5) "Eligible" means an applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination by OPM.

(6) "Employee" means a civilian officer or employee.

(7) "Metropolitan area of Washington, D.C.", means the District of Columbia; Alexandria, Fairfax, and Falls Church Cities, Va.; Arlington, Fairfax, Loudoun, and Prince William Counties, Va.; and Charles, Montgomery, and Prince Georges Counties, Md.

(8) "Noncompetitive action" means a promotion, demotion, reassignment, transfer, reinstatement, or an appointment based on prior service.

(9) "Overseas" means outside the continental United States, but does not include Alaska, Guam, Hawaii, the Isthmus of Panama, Puerto Rico, or the Virgin Islands.

(10) "Position change" means a promotion, demotion, or reassignment.

(11) "Promotion" means a change of an employee, while serving continuously within the same agency:

(i) To a higher grade when both the old and the new positions are under the General Schedule or under the same type graded wage schedule; or

(ii) To a position with a higher rate of pay when both the old and the new positions are under the same type ungraded wage schedule, or are in different pay method categories.

(12) "Reassignment" means a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion.

(13) "Reemployed annuitant" means an employee whose annuity under subchapter III of chapter 83 of title 5, United States Code, was continued on reemployment in an appointive position on or after October 1, 1956.

(14) "Register" means a list of qualified applicants compiled in order of relative standing for certification.

(15) "Reinstatement" means the noncompetitive reemployment for service as a career or career-conditional employee of a person formerly employed in the competitive service who had a competitive status or was serving probation when he was separated from the service.

(16) "Status quo employee" means an employee who failed to acquire a competitive status when the position in which he was serving was placed in the competitive service by a statute, Executive order, or Civil Service rule, which permitted his retention without the acquisition of status.

(17) "Tenure" means the period of time an employee may reasonably expect to serve under his current appointment. It is granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is in a competitive position or in an excepted position.

(18) "Transfer" means a change of an employee, without a break in service of 1 full workday, from a position in one agency to a position in another agency.

(5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218)

[33 FR 12407, Sept. 4, 1968, as amended at 34 FR 19495, Dec. 10, 1969; 38 FR 22535, Aug. 22, 1973]

PART 211—VETERAN PREFERENCE

Subpart A—Definitions

§ 211.101 Definitions.

In this chapter, "preference eligible" has the meaning given that term by section 2108 of title 5, United States Code.

(5 U.S.C. 1302)

[33 FR 12408, Sept. 4, 1968]

PART 212—COMPETITIVE SERVICE AND COMPETITIVE STATUS

Subpart A—Competitive Service

Sec.
212.101 Definitions.
212.102 Authority to make determinations.

Subpart B—[Reserved]

Subpart C—Competitive Status

212.301 Competitive status defined.

Subpart D—Effect of Competitive Status on Position

212.401 Effect of competitive status on position.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

SOURCE: 33 FR 12408, Sept. 4, 1968, unless otherwise noted.

Subpart A—Competitive Service

§ 212.101 Definitions.

In this chapter:

(a) "Competitive service" has the meaning given that term by section 2102 of title 5, United States Code, and includes:

(1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and

(2) All positions in the legislative and judicial branches of the Federal

Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute.

(b) "Competitive position" means a position in the competitive service.

(5 U.S.C. 2102)

[33 FR 12408, Sept. 4, 1968, as amended at 45 FR 62413, Sept. 19, 1980]

§ 212.102 Authority to make determinations.

OPM determines finally whether a position is in the competitive service.

Subpart B—[Reserved]

Subpart C—Competitive Status

§ 212.301 Competitive status defined.

In this chapter, competitive status means an individual's basic eligibility for noncompetitive assignment to a competitive position. Competitive status is acquired by completion of a probationary period under a career-conditional or career appointment or under a career executive assignment following open competitive examination, or by statute, Executive order, or the Civil Service rules, without open competitive examination. An individual with competitive status may be, without open competitive examination, reinstated, transferred, promoted, reassigned, or demoted, subject to conditions prescribed by the Civil Service rules and regulations.

Subpart D—Effect of Competitive Status on Position

§ 212.401 Effect of competitive status on position.

(a) An employee is in the competitive service when he has competitive status and is in a competitive position under a nontemporary appointment.

(b) An employee in the competitive service at the time his position is first listed under Schedule A, B, or C remains in the competitive service while he occupies that position.

PART 213—EXCEPTED SERVICE

Subpart A—General Provisions

Sec.
213.101 Definitions.
213.102 Identification of positions in Schedule A, B, or C.
213.103 Publication of excepted appointing authorities in Schedules A, B, and C.

Subpart B—[Reserved]

Subpart C—Excepted Schedules

SCHEDULE A

213.3101 Positions other than those of a confidential or policy-determining character for which it is impracticable to examine.
213.3102 Entire executive civil service.
213.3199 Temporary organizations.

SCHEDULE B

213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.
213.3202 Entire executive civil service.

SCHEDULE C

213.3301 Positions of a confidential or policy-determining character.
213.3301b Revocation of exceptions.
213.3302 Temporary Schedule C positions during a presidential transition, as a result of changes in department or agency heads, or at the time of the creation of a new department or agency.

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp. p. 218, unless otherwise noted.

SOURCE: 46 FR 20147, Apr. 3, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 213.101 Definitions.

In this chapter:

(a) Excepted service has the meaning given that term by section 2103 of title 5, United States Code, and includes all positions in the executive branch of the Federal Government which are specifically excepted from the competitive service by or pursuant to statute, by the President, or by the Office of Personnel Management, and which are not in the Senior Executive Service.

(b) "Excepted position" means a position in the excepted service.

(5 U.S.C. 2103)

§ 213.102 Identification of positions in Schedule A, B, or C.

The Office of Personnel Management shall decide whether the duties of any particular position are such that it may be filled as an excepted position under Schedule A, B, or C. Authority to establish positions under Schedule C may be delegated under terms of an agreement between OPM and employing agencies. Establishment of Schedule C positions under terms of such an agreement would be subject to existing criteria set forth in § 213.3301, to quotas established by OPM, and to any additional instructions prepared by OPM.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

§ 213.103 Publication of excepted appointing authorities in Schedules A, B, and C.

(a) Schedule A, B, and C appointing authorities available for use by all agencies shall be published as regulations in the FEDERAL REGISTER and the Code of Federal Regulations. These authorities shall also be published in the Federal Personnel Manual.

(b) Establishment and revocation of Schedule A, B, and C appointing authorities applicable to a single agency shall be published monthly in the Notices section of the FEDERAL REGISTER.

(c) A consolidated listing of all Schedule A, B, and C authorities current as of June 30 of each year, with assigned authority numbers, shall be published annually as a notice in the FEDERAL REGISTER.

[47 FR 28902, July 2, 1982]

Subpart B—[Reserved]

Subpart C—Excepted Schedules

SCHEDULE A

§ 213.3101 Positions other than those of a confidential or policy-determining character for which it is impracticable to examine.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions which are not of a confidential or policy-determining character, and which are not in the Senior Executive Service, for which it is not practicable to examine. Examining for this purpose means application of the qualification standards and requirements established for the competitive service. Positions filled under this authority are excepted from the competitive service and constitute Schedule A. For each authorization under this section, OPM shall assign an identifying number from 213.3102 through 213.3199 to be used by the appointing agency in recording appointments made under that authorization.

(b) An agency (including a military department) may not appoint the son or daughter of a civilian employee of that agency, or the son or daughter of a member of its uniformed service, to a position listed in Schedule A for student employment within the United States.

(c) An agency (including a military department) may appoint the son or daughter of a civilian employee of that agency or the son or daughter of a member of its uniformed service to a summer position when:

(1) The opportunities for employment have been publicized in the summer announcement, OPM regional and/or area office supplements, or through Federal job information centers and State Employment Services for a minimum 2-week period;

(2) There are no eligible available with the same or higher rating under merit staffing plans for which the ranking criteria satisfy job-relatedness requirements of FPM Supplement 271-2, "Tests and Other Applicant Appraisal Procedures," or for which

ranking is not appropriate and qualified candidates are considered on a strictly random basis; and

(3) The appointment is not prohibited by section 3110 of title 5, United States Code, or Part 310 of this chapter relating to the employment of relatives.

(d) Paragraphs (b) and (c) of this section do not restrict the appointment of persons:

(1) Who are eligible for placement assistance under OPM's Displaced Employees (DE) Program;

(2) Who are employed to meet urgent needs resulting from an emergency posing an immediate threat to life or property;

(3) Who are members of families which are eligible to receive financial assistance under a public welfare program or the total income of which in relation to family size does not exceed limits established by OPM and published in the Federal Personnel Manual; or

(4) Who are severely physically handicapped or mentally retarded when such appointees meet the criteria under Schedule A appointing authorities § 213.3102 (t) and (u), except that for the (u) eligibility no certification from a State rehabilitation or Veterans Administration counselor is required;

(e) An agency may appoint for summer employment within the United States in positions under Schedule A only in accordance with the terms of OPM's summer employment program. This restriction does not apply to positions that are excepted only when filled by particular types of individuals.

(f) In this section "summer employment" means any employment beginning after May 12 which will end before October 1 of the same year. "Student employment" means the employment of persons who are enrolled or who have been accepted for enrollment, on a substantially full-time basis, as resident students of a secondary school or of an institution of higher learning; a resident student, for this purpose, is a student in actual physical attendance at a school as distinguished from a coorespondence student.

[46 FR 20147, Apr. 3, 1981; 46 FR 45323, Sept. 11, 1981]

§ 213.3102 Entire executive civil service.

(a) Positions of Chaplain and Chaplain's Assistant.

(b) [Reserved]

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his/her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS-3. This limitation on compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time, or intermittent employment in wage board type occupations (i.e., positions excluded from Classification Act coverage by section 202(7) of the

Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by (1) appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent grade level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of OPM where examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (l) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Administration, and in the International Boundary and Water Commission: or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS-7 and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be: (1) Bona fide high school science or mathematics teachers or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No person shall be employed under this provision in (i) positions of a routine clerical type or (ii) in excess of 1040 working hours a year; except that the 1040 working-hours-a-year limitation shall not apply to positions at grade GS-4 and below which are established in connection with associate degree cooperative education programs. Students enrolled in bachelor's degree cooperative education programs as defined in § 213.3202(a) shall not be employed under this provision.

Appointments under this authority may be made only to positions for which qualification standards established under Part 302 of this chapter are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)-(s) [Reserved]

(t) Positions when filled by mentally retarded persons in accordance with written agreements executed between an agency and the OPM. Provisions to be included in such agreements are specified in the Federal Personnel Manual. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by the Office.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by the Office.

(v) Between May 13 and September 30 only, temporary Summer Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by the Office of Personnel Management or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1938, as amended.

(w) Part-time or intermittent positions the duties of which involve routine work up to and including the GS-4 level of difficulty or equivalent under the Federal Wage System, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met:

(1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full-time whenever their school is officially closed and during any school vacation period;

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by the Office of Personnel Management, except that this requirement does not apply to mentally retarded or severely physically handicapped students; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. However, such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under the authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1-year beyond the date of that person's release from custody.

(y) Positions at grade GS-2 and below for summer employment as defined in § 213.3101(d), of assistants to scientific, professional, and technical employees, when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS-11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of the Office except when the authority is specifically included in a delegated examining agreement with the Office.

(cc) Positions at GS-15 and below when filled by persons identified as Interchange Executives by the President's Commission on Personnel Interchange. Appointments made under this authority may not extend beyond 2 years.

(dd)-(ee) [Reserved]

(ff) Not to exceed 24 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Pub. L. 91-452 and related statutes. A person appointed under this authority may continue to be employed under it after he ceases to be in a qualifying program only as long as he remains in the same agency without a break in service.

(gg)-(hh) [Reserved]

(ii) Positions of Presidential Intern, GS-9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS-9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to one additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with the provisions of § 315.708 of this chapter and requirements published in the Federal Personnel Manual.

(jj) Legal intern positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) [Reserved]

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

(5 U.S.C. 3301, 3307, 8337(h); 5 U.S.C. 3301, 3302; EO 12364, 47 FR 22931)

[47 FR 28902, July 2, 1982, as amended at 47 FR 43634, Oct. 1, 1982; 48 FR 2115, Jan. 18, 1983; 48 FR 11923, 11924, Mar. 22, 1983; 48 FR 24857, June 3, 1983; 50 FR 11145, Mar. 20, 1985]

§ 213.3199 Temporary organizations.

(a) Positions at GS-15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS-15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met:

(1) The temporary organization is established by an authority outside the agency, usually by law or Executive order;

(2) The temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years;

(3) The work to be performed by the temporary organization is outside the agency's continuing responsibilities; and

(4) The positions filled under this authority are those for which other staffing resources or authorities are not available within the agency.

An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

[47 FR 28904, July 2, 1982]

SCHEDULE B

§ 213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions which are not of a confidential or policy-determining character, and which are not in the Senior Executive Service, for which it is impracticable to hold open competition or to apply usual competitive examining procedures. Appointments under this authority are subject to the basic qualification standards established by the Office of Personnel Management for the occupation and grade level. Positions filled under this authority are excepted from the competitive service and constitute Schedule B. For each authorization under this section, OPM shall assign a number from 213.3202 through 213.3299 to be used by the appointing agency in recording appointments made under that authorization.

(b) Except as provided in § 213.3101, an agency (including a military department) may not appoint the son or daughter of a civilian employee of that agency, or the son or daughter of a member of its uniformed service, to a position filled under Schedule B for student employment in the United States.

[46 FR 20147, Apr. 3, 1981, as amended at 47 FR 57655, Dec. 28, 1982]

§ 213.3202 Entire executive civil service.

The provisions established under paragraphs (a) through (i) of this section are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the requirements and conditions governing career or career-conditional appointments, including investigation by OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least

26 weeks, or 1040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for the graduate degree and provide experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for formally arranged schedules of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy the requirements for graduation and must provide the experience necessary for career or career-conditional appointment in selected occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S Truman Foundation Scholarship Program under the provisions of Pub. L. 93-842 to permit scheduled periods of attendance at institutions of higher education combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements of programs established by agreement between the Harry S Truman Scholarship Foundation and the employing agency and provide the experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Positions at shipyards, air rework facilities and other major industrial activities in the Department of the Navy which prepare students at the high school level, upon satisfactory completion of a cooperative education program of at least 1,040 hours for employment in preapprentice positions or in helper positions at the WG-5 level as pipefitters, marine machinist, inside machinist, welder, sheet metal mechanic, and such other occupations where the journeyman level is WG-9 or above as the Associate Director, Staffing Group, shall have approved, provided that: (1) Not more than 25 percent of the positions in covered occupations will be filled annually at any single installation through this conversion authority, and (2) the maximum time during which any student will be employed in the program is 18 months, and (3) except for conditions specified in this authority, students will be subject to instructions governing all other high school vocational education students in cooperative education programs, and (4) any student who completes a program without a diploma must have an authenticated certificate from the school indicating satisfactory completion in his/her personnel folder.

(f) Positions under the Federal Junior Fellowship Program, a career-related work-study program covered under the provisions of E.O. 12015.

(g)-(i) [Reserved]

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS-15 and below when filled by individuals who: (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disbility; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) Professional and administrative career (PAC) positions at the GS-5 or GS-7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79-271, which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescribed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established by an appointment authority agreement to be executed for each position excepted from the competitive service pursuant to this authority. An incumbent of a Schedule B PAC position may be appointed to a competitive position upon a demonstration that the employee has met qualifications on the basis of an examination of the employee's experience and such other measures as may be prescribed for such position in civil service laws, rules, and regulations, including the Federal Personnel Manual.

[47 FR 28904, July 2, 1982, as amended at 47 FR 38258, Aug. 31, 1982; 48 FR 46261, Oct. 12, 1983]

SCHEDULE C

§ 213.3301 Positions of a confidential or policy-determining character.

Upon specific authorization by OPM, or under the terms of an agreement with OPM, agencies may make appointments under this section to positions which are policy-determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials. Positions filled under this authority are excepted from the competitive service and constitute Schedule C. Each position authorized under this section will be assigned a number from 213.3302 to 213.3399, or other appropriate number, to be used by the agency in recording appointments made under that authorization.

[48 FR 39209, Aug. 30, 1983]

§ 213.3301b Revocation of exceptions.

(a) The exception from the competitive service for each position at GS-15 and below listed in Schedule C by OPM is revoked immediately upon the position becoming vacant.

(b) An agency shall notify the Office of Personnel Management within 3 work days after a Schedule C position at GS-15 and below has been vacated.

[46 FR 58271, Dec. 1, 1981]

§ 213.3302 Temporary Schedule C positions during a presidential transition, as a result of changes in department or agency heads, or at the time of a creation of a new department or agency.

(a) An agency may establish temporary positions at the GS-15 grade level and below necessary to assist a department or agency head during the period immediately following a change in presidential administration, when a new department or agency head has entered on duty, or at the time of the creation of a new department or agency. Such positions shall be either:

(1) Identical to an existing Schedule C position if intent to vacate that position has been put in writing by management or the present incumbent, such position to be designated as Identical Temporary Schedule C (ITC); or

(2) A new temporary Schedule C position, to be designated New Temporary Schedule C (NTC), when it is determined that the department or agency head's needs cannot be met through establishment of an Identical Schedule C position. The number of NTC positions established by any one agency may not exceed 25 percent of the total number of permanent Schedule C positions authorized for that agency as of March 31, 1980. In the case of the creation of a new department or agency, the number of NTC positions should be reasonable in light of the size and program responsibilities of that department or agency. For those agencies with delegated authority to except positions under Schedule C, the total number of NTC positions established may not exceed 25 percent of that agency's quota of permanent Schedule C positions as approved by the Office of Personnel Management or 25 percent of the total number of permanent Schedule C positions authorized for that agency as of March 31, 1980, whichever is greater.

(b) Individual appointments under this authority may be made for 120 days, with one additional extension of 120 days. These positions must be of a confidential or policy-determining character, and are subject to instructions issued by the Office of Personnel Management.

[46 FR 20147, Apr. 3, 1981, as amended at 46 FR 31405, June 16, 1981. Redesignated at 46 FR 35079, July 7, 1981]

PART 214—SENIOR EXECUTIVE SERVICE

Subpart A—[Reserved]

Subpart B—General Provisions

Sec.
214.201 Definitions.
214.202 Authority to make determinations.

Sec.

Subpart C—Exclusions

214.301 Exclusions.

Subpart D—Types of Positions

214.401 Types of positions.
214.402 Career reserved positions.
214.403 Change of position type.

AUTHORITY: 5 U.S.C. 3132.

SOURCE: 45 FR 62414, Sept. 19, 1980, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 214.201 Definitions.

For the purposes of this part:

"Agency," "Senior Executive Service position," "career appointee," "limited term appointee," "limited emergency appointee," and "noncareer appointee" have the meanings set forth in section 3132(a) of title 5, United States Code.

"Equivalent position" as used in section 3132(a)(2) of title 5, United States Code, means a position under any pay system where the level of the duties and responsibilities of the position and the rate of pay are comparable to that of a position at GS-16, -17, or -18, or at Executive Level IV or V.

"Senior Executive Service" has the meaning given that term by section 2101a of title 5, United States Code, and includes all positions which meet the definition in section 3132(a)(2) of title 5.

§ 214.202 Authority to make determinations.

(a) Each agency is responsible for determining, in accordance with Office of Personnel Management guidelines, which of its positions should be included in the Senior Executive Service.

(b) Agency determinations may be reviewed by the Office of Personnel Management to ensure adherence with law and regulation.

Subpart C—Exclusions

§ 214.301 Exclusions.

If not excluded from the Senior Executive Service by section 3132(a) (1) or (2) of title 5, United States Code, an agency, or unit thereof, may be excluded only under the provisions of section 3132 (c) through (f) of title 5.

Subpart D—Types of Positions

§ 214.401 Types of positions.

There are two types of positions in the Senior Executive Service:

(a) General positions, which may be filled by a career, noncareer, limited emergency, or limited term appointee.

(b) Career reserved positions, which may be filled only by a career appointee.

§ 214.402 Career reserved positions.

(a) The head of each agency is responsible for designating career reserved positions in accordance with the regulations in this section.

(b) A position shall be designated as a career reserved position if:

(1) The position (except a position in the Executive Office of the President):

(i) Was under the Executive Schedule, or the rate of basic pay was determined by reference to the Executive Schedule, on October 12, 1978;

(ii) Was specifically required under section 2102 of title 5, United States Code, or otherwise required by law to be in the competitive service; and

(iii) Entailed direct responsibility to the public for the management or operation of particular government programs or functions; or

(2) The position must be filled by a career appointee to ensure impartiality, or the public's confidence in the impartiality, of the Government.

(c) The head of an agency shall use the following criteria in determining whether paragraph (b)(2) of this section is applicable to an individual position:

(1) Career reserved positions include positions the principal duties of which involve day-to-day operations, without responsibility for or substantial involvement in the determination or public advocacy of the major controversial policies of the Administration or agency, in the following occupational disciplines:

(i) Adjudication and appeals;

(ii) Audit and inspection;

(iii) Civil or criminal law enforcement and compliance;

(iv) Contract administration and procurement;

(v) Grants administration;

(vi) Investigation and security matters; and

(vii) Tax liability, including the assessment or collection of taxes and the preparation or review of interpretative opinions.

(2) Career reserved positions also include:

(i) Scientific or other highly technical or professional positions where the duties and responsibilities of the specific position are such that it must be filled by a career appointee to insure impartiality, of the Government.

(ii) Other positions requiring impartiality, or the public's confidence in impartiality, as determined by an agency in light of its mission.

(d) The Office of Personnel Management may review agency designations of general and career reserved positions. If the Office finds that an agency has designated any position as general that should be career reserved, it shall direct the agency to make the career reserved designation.

(e) The minimum number of positions in the Senior Executive Service Governmentwide that must be career reserved is 3,571 as determined by the Director of the Office of Personnel Management under section 3133(e) of 5 U.S.C. To assure that this figure is met, the Office may establish a minimum number of career reserved positions for individual agencies. An agency must maintain or exceed this number unless it is adjusted by the Office.

[45 FR 62414, Sept. 19, 1980; 45 FR 83471, Dec. 19, 1980]

§ 214.403 Change of position type.

An agency may not change the designation of an established position from career reserved to general, or from general to career reserved, without the prior approval of the Office of Personnel Management.

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

Subpart A—[Reserved]

Subpart B—Exercise of Agency Authority To Take Personnel Actions

Sec.
230.201 Standards and requirements for agency personnel actions.
230.202 Withdrawal of agency authority.

Subpart C—[Reserved]

Subpart D—Agency Authority to Take Personnel Actions in a National Emergency

230.401 Agency authority to take personnel actions in a national emergency disaster.
230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

Subpart A—[Reserved]

Subpart B—Exercise of Agency Authority To Take Personnel Actions

§ 230.201 Standards and requirements for agency personnel actions.

In taking a personnel action authorized by this chapter, each agency shall comply with the qualification standards and regulations issued by the Office of Personnel Management, the instructions published by the Office of Personnel Management in the Federal Personnel Manual, and the provisions of any agreement developed between the Office and the agency in connection with delegation of a specific authority. When a personnel action is being taken as a result of (a) an order of a Court or a settlement agreement, or (b) a decision or order of or a settlement agreement or an arbitral award reached under the rules and regulations of the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or the Office of Personnel Management, the agency shall follow the instructions in Federal Personnel Manual Chapter 296.

(5 U.S.C. 1104; Pub. L. 95-454; 92 Stat. 1120 and sec. 3(5) of the Civil Service Reform Act of 1978, Pub. L. 95-454; 92 Stat. 1112)

[46 FR 32425, June 23, 1981]

§ 230.202 Withdrawal of agency authority.

OPM may suspend or withdraw any authority granted by this chapter to an agency when it finds that the agency has not complied with the qualification standards issued by OPM, the instructions published by OPM in the Federal Personnel Manual, or the regulations in this chapter, or that the suspension or withdrawal is in the interest of the service for any other reason.

[33 FR 12408, Sept. 4, 1968]

Subpart C—[Reserved]

Subpart D—Agency Authority To Take Personnel Actions in a National Emergency

§ 230.401 Agency authority to take personnel actions in a national emergency disaster.

(a) Upon an attack on the United States, agencies are authorized to carry out whatever personnel activities may be necessary to the effective functioning of their organizations during a period of disaster without regard to any regulation or instruction of OPM, except those which become effective upon or following an attack on the United States. This authority applies only to actions under OPM jurisdiction.

(b) Actions taken under this section shall be consistent with affected regulations and instructions as far as possible under the circumstances and shall be discontinued as soon as conditions permit the reapplication of the affected regulations and instructions.

(c) An employee may not acquire a competitive civil service status by virtue of any action taken under this section.

(d) Actions taken, and authority to take actions, under this section may be adjusted or terminated in whole or in part by OPM.

(e) Agencies shall maintain records of the actions taken under this section.

[35 FR 5173, Mar. 27, 1970]

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

(a) *Basic authority.* In a national emergency, as defined in the Federal Personnel Manual, an agency may make emergency-indefinite appointments to continuing positions (normally those expected to last longer than a year) when it is not in the public interest to make career or career-conditional appointments. Except as provided by paragraphs (b) and (c) of this section, the agency shall make appointments under this authority from appropriate registers of eligibles as long as there are available eligibles.

(b) *Appointment outside the register.* An agency may make emergency-indefinite appointments under this section outside registers of eligibles when all the following conditions are met:

(1) A number of vacancies must be filled immediately as a result of conditions created by the national emergency;

(2) Either the number of vacancies to be filled exceeds the number of immediately available eligibles or emergency conditions do not allow sufficient time to make this determination; and

(3) Available eligibles on registers are given prior or concurrent consideration for appointment to the extent possible within emergency time considerations.

(c) *Appointment noncompetitively.* An agency may give emergency-indefinite appointments under this section to the following classes of persons without regard to registers of eligibles and the provisions in § 332.102 of this chapter:

(1) Persons who were recruited on a standby basis prior to the national emergency in accordance with applicable requirements published in the Federal Personnel Manual;

(2) Members of the National Defense Executive Reserve, designated in accordance with section 710(e) of the Defense Production Act of 1950, Executive Order 11179 of September 22, 1964, and applications issued by the agency authorized to implement the law and Executive Order; and

(3) Former Federal employees eligible for reinstatement.

(d) *Tenure of emergency-indefinite employees.* (1) Emergency-indefinite employees do not acquire a competitive status on the basis of their emergency-indefinite appointments.

(2) An emergency-indefinite appointment may be continued for the duration of the emergency for which it is made.

(e) *Trial period.* (1) The first year of service of an emergency-indefinite employee is a trial period.

(2) The agency may terminate the appointment of an emergency-indefinite employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

(f) *Eligibility for within-grade increases.* An emergency-indefinite employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

(g) *Applications of other regulations.* (1) The term "indefinite employee" as used in the following includes an emergency-indefinite employee: Section 316.801, Part 351, Part 353, Subpart G of Part 550, and Part 752 of this chapter.

(2) The selection procedures of Part 333 of this chapter apply to emergency-indefinite employees appointed outside the register under paragraph (b) of this section.

(3) Despite the provisions in § 831.201(a)(11) of this chapter, an employee serving under an emergency-indefinite appointment under authority of this section is excluded from retirement coverage, except as provided in paragraph (b) of § 831.201 of this chapter.

(h) *Promotion, demotion, or reassignment.* An agency may promote, demote, or reassign an emergency-indefinite employee to any position for which it is making emergency-indefinite appointments.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54691, Sept. 21, 1979]

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

Subpart A—Personnel Management Responsibilities

Sec.
250.101 Delegation agreements.
250.102 Authority to take corrective action, suspend, or revoke agreement.

AUTHORITY: 5 U.S.C. 1104; Pub. L. 95-454; 92 Stat. 1120 and Sec. 3(5); Pub. L. 95-454; 92 Stat. 1120.

Subpart A—Personnel Management Responsibilities

§ 250.101 Delegation agreements.

In certain circumstances, an agency will receive authorities through a delegation agreement developed between the agency headquarters and OPM. The agreement will set forth the conditions for application of a particular authority (or authorities). This agreement will include a description of performance standards and the system of oversight to be used in agency and OPM monitoring of authority use. An agreement will be for an initial period not to exceed two years. Renewals may be for an indefinite period unless modified, suspended or revoked for abuse.

[44 FR 55131, Sept. 25, 1979]

§ 250.102 Authority to take corrective action, suspend, or revoke agreement.

If OPM finds that the agency has taken an action under a delegated agreement contrary to law, rule, regulation or standard, it may require the agency to take corrective action. If, in the judgment of OPM, the agency is not adhering to the provisions of the delegated agreement, it may suspend or revoke the agreement at any time.

[44 FR 55132, Sept. 25, 1979]

PART 293—PERSONNEL RECORDS

Subpart A—Basic Policies on Maintenance of Personnel Records

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293.101 Purpose and scope.
293.102 Definitions.
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293.104 Collection of information.
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Subpart D—Employee Performance File System Records

293.401 Applicability of regulations.
293.402 Establishment of separate employee performance record system.
293.403 Contents of employee performance files.
293.404 Retention schedule.
293.405 Disposition of records.
293.406 Disclosure of records.

AUTHORITY: 5 U.S.C. 552a, 4302a, and 4315; E.O. 12107 (December 28, 1978), 3 CFR 1954-1958 Comp.; 5 CFR 7.2; E.O. 9830, 3 CFR 1943-1948 Comp.

SOURCE: 44 FR 65033, Nov. 9, 1979, unless otherwise noted.

Subpart A—Basic Policies on Maintenance of Personnel Records

§ 293.101 Purpose and scope.

(a) This subpart sets forth basic policies governing the creation, development, maintenance, processing, use, dissemination, and safeguarding of personnel records which the Office of Personnel Management requires agencies to maintain in the personnel management or personnel policy setting process.

(b) Agencies in the Executive Branch of the Federal Government are subject to specific Office of Personnel Management recordkeeping requirements to varying degrees, pursuant to statute, Office regulation, or formal agreements between the Office and agencies. This subpart applies to any department or independent establishment in the Executive Branch of the Federal Government, including a government corporation or Government controlled corporation, except those specifically excluded from Office recordkeeping requirements by statute, Office regulation, or formal agreement between the Office and that agency.

§ 293.102 Definitions.

In this part:

"Agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the Executive Branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

"Data subject" means the individual about whom the Office or agency is maintaining information in a system of records;

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

"Information" means papers, records, photographs, magnetic storage media, micro storage media, and other documentary materials regardless of physical form or characteristics, containing data about an individual and required by the Office in pursuance of law or in connection with the discharge of official business, as defined by statute, regulation, or administrative procedure;

"Maintain" includes collect, use, or disseminate;

"Office" means the Office of Personnel Management;

"Personnel record" means any record concerning an individual which is maintained an used in the personnel management or personnel policysetting process. (For purposes of this part, this term is not limited just to those personnel records in a system of records and subject to the Privacy Act);

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, criminal history, or employment history;

"System of records" means a group of records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 293.103 Recordkeeping standards.

(a) The head of each agency shall ensure that persons having access to or involved in the creation, development, processing, use, or maintenance of personnel records are informed of pertinent recordkeeping regulations and requirements of the Office of Personnel Management and the agency. Authority to maintain personnel records does not constitute authority to maintain information in the record merely because it may be useful; both Government-wide and internal agency personnel records shall contain only information concerning an individual that is relevant and necessary to accomplish the Federal personnel management purposes required by statute, Executive order, or Office regulation.

(b) The Office is responsible for establishing minimum standards of accuracy, relevancy, necessity, timeliness, and completeness for personnel records it requires agencies to maintain. These standards are discussed in appropriate chapters of the Federal Personnel Manual. Before approval of any agency requests for changes in recordkeeping practices governed by the Federal Personnel Manual, the Office will examine the proposal or request in the context of such standards set forth by the agency in support of the proposal and in light of the personnel program area that requires these records.

§ 293.104 Collection of information.

(a) Any information in personnel records whether or not those records are in a system of records, used in whole or in part in making a determination about an individual's rights, benefits, or privileges under Federal personnel programs should, to the greatest extent practicable, be collected directly from the individual concerned. Factors to be considered in determining whether to collect the data from the individual concerned or a third party are when:

(1) The nature of the information is such that it can only be obtained from another party;

(2) The cost of collecting the information directly from the individual is unreasonable when compared with the cost of collecting it from another party;

(3) There is virtually no risk that information collected from other parties, if inaccurate, could result in a determination adverse to the individual concerned;

(4) The information supplied by an individual must be verified by another party; or

(5) There are provisions made, to the greatest extent practicable, to vertify information collected from another party with the individual concerned.

§ 293.105 Restrictions on collection and use of information.

(a) First Amendment. Personnel records describing how individuals exercise rights guaranteed by the First Amendment are prohibited unless expressly authorized by statute, or by the individual concerned, or unless pertinent to and within the scope of an authorized law enforcement activity. These rights include, but are not limited to, free exercise of religious and political beliefs, freedom of speech and the press, and freedom to assemble and to petition the government.

(b) Social Security Number.

(1) Agencies may not require individuals to disclose their Social Security Number unless disclosure would be required;

(i) Under Federal statute; or

(ii) Under any statute, Executive order, or regulation that authorizes any Federal, State, or local agency maintaining a system of records that was in existence and operating prior to January 1, 1975, to request the Social Security Number as a necessary means of verifying the identity of an individual.

(2) Individuals asked to voluntarily (circumstances not covered by paragraph (b)(1) of this section) provide their Social Security Number shall suffer no penalty or denial of benefits for refusing to provide it.

§ 293.106 Safeguarding information about individuals.

(a) To ensure the security and confidentiality of personnel records, in whatever form, each agency shall establish administrative, technical, and physical controls to protect information in personnel records from unauthorized access, use, modification, destruction, or disclosure. As a minimum, these controls shall require that all persons whose official duties require access to and use of personnel records be responsible and accountable for safeguarding those records and for ensuring that the records are secured whenever they are not in use or under the direct control of authorized persons. Generally, personnel records should be held, processed, or stored only where facilities and conditions are adequate to prevent unauthorized access.

(b) Personnel records must be stored in metal filing cabinets which are locked when the records are not in use, or in a secured room. Alternative storage facilities may be employed provided they furnish an equivalent or greater degree of security than these methods. Except for access by the data subject, only employees whose official duties require access shall be allowed to handle and use personnel records, in whatever form or media the records might appear. To the extent feasible, entry into personnel record storage areas shall be similarly limited. Documentation of the removal of records from storage areas must be kept so that adequate control procedures can be established to assure that removed records are returned on a timely basis.

(c) Disposal and destruction of personnel records shall be in accordance with the General Record Schedule issued by the General Services Administration for the records or, alternatively, with Office or agency records control schedules approved by the National Archives and Records Service of the General Services Administration.

§ 293.107 Special safeguards for automated records.

(a) In addition to following the security requirements of § 293.106 of this part, managers of automated personnel records shall establish administrative, technical, physical, and security safeguards for data about individuals in automated records, including input and output documents, reports, punched cards, magnetic tapes, disks, and on-line computer storage. The safeguards must be in writing to comply with the standards on automated data processing physical security issued by the National Bureau of Standards, U.S. Department of Commerce, and, as a minimum, must be sufficient to:

(1) Prevent careless, accidental, or unintentional disclosure, modification, or destruction of identifiable personal data;

(2) Minimize the risk that skilled technicians or knowledgeable persons could improperly obtain access to, modify, or destroy identifiable personnel data;

(3) Prevent casual entry by unskilled persons who have no official reason for access to such data;

(4) Minimize the risk of an unauthorized disclosure where use is made of identifiable personal data in testing of computer programs;

(5) Control the flow of data into, through, and from agency computer operations;

(6) Adequately protect identifiable data from environmental hazards and unneccessary exposure; and

(7) Assure adequate internal audit procedures to comply with these procedures.

(b) The disposal of identifiable personal data in automated files is to be accomplished in such a manner as to make the data unobtainable to unauthorized personnel. Unneeded personal data stored on reusable media such as magnetic tapes and disks must be erased prior to release of the media for reuse.

§ 293.108 Rules of conduct.

(a) *Scope.* These rules of conduct apply to all Office and agency employees responsible for creation, development, maintenance, processing, use, dissemination, and safeguarding of personnel records. The Office and agencies shall require that such employees are familiar with these and appropriate supplemental agency internal regulations.

(b) *Standards of Conduct.* Office and agency employees whose official duties involve personnel records shall be sensitive to individual rights to personal privacy and shall not disclose information from any personnel record unless disclosure is part of their official duties or required by executive order, regulation, or statute (e.g., required by the Freedom of Information Act, 5 U.S.C. 552).

(c) *Improper uses of personnel information.* Any Office or agency employee who makes a disclosure of personnel records knowing that such disclosure is unauthorized, or otherwise knowingly violates these regulations, shall be subject to disciplinary action and may also be subject to criminal penalties where the records are subject to the Privacy Act (5 U.S.C. 552a). Employees are prohibited from using personnel information not available to the public, gained through official duties, for commercial solicitation or sale, or for personal gain.

Subpart B—Personnel Records Subject to the Privacy Act

§ 293.201 Purpose.

The purpose of this subpart is to set forth the criteria to be used to determine when personnel records on individuals are subject both to the regulations contained in this part and to Office or agency regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. When personnel records are maintained within a system of records, the records are deemed to be within the scope of both the regulations in this part and Office or agency regulations implementing the Privacy Act.

§ 293.202 Records subject to Office or agency Privacy Act regulations.

When the Office of Personnel Management publishes in the FEDERAL REGISTER a notice of system of records for personnel records which are maintained by the agencies or by the Office, that system of records will be subject to the regulations in this part and also to the regulations in Part 297 of this chapter. When agencies publish a notice of system of records for personnel records required by the Office that are not included in the Office's notices, those agency systems of records will be subject both to the regulations contained in this part and to agency promulgated regulations that implement the Privacy Act.

§ 293.203 Review of Office or agency practices.

Reviews of agency personnel management policies and practices will be conducted to insure compliance with Office regulations. The Office may direct agencies to take whatever corrective action is necessary. Office or agency officials who have knowledge of violations of these regulations shall take whatever corrective action is necessary. Agencies shall list officials of the Office of Personnel Management as a routine user for personnel records to assist the Office in its oversight responsibilities.

Subpart C—Official Personnel Folder

AUTHORITY: 5 U.S.C. 552, 5 U.S.C. 552a; E.O. 12107 (December 28, 1978); 5 U.S.C. 1302, 3 CFR 1954-1958 Compilation; 5 CFR 7.2; E.O. 9830; 3 CFR 1943-1948 Compilation.

SOURCE: 50 FR 3309, Jan. 24, 1985, unless otherwise noted.

§ 293.301 Applicability of regulations.

This subpart applies to, and within this subpart "agency" means, each executive department and independent establishment of the Federal Government, each corporation wholly owned or controlled by the United States, and with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government.

§ 293.302 Establishment of Official Personnel Folder.

Each agency shall establish an Official Personnel Folder (OPF) for each employee occupying a position subject to this part, except as provided in § 293.306. Except as provided in the Federal Personnel Manual, there will be only one OPF maintained for each employee regardless of service in various agencies.

§ 293.303 Ownership of folder.

The OPF of each employee in a position subject to civil service rules and regulations is under the jurisdiction and control of, and is part of the records of, the Office of Personnel Management (the Office).

§ 293.304 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. Performance ratings of record, including the performance plan on which the most recent rating was based, may also be maintained in the Official Personnel Folder for each employee covered under the Performance Management and Recognition System under Part 540 of this chapter. The folder shall also contain long-term records affecting the employee's status and service as required by OPM's instructions and as designated in FPM Supplement 293-31.

[50 FR 35494, Aug. 30, 1985]

§ 293.305 Type of folder to be used.

Each agency shall use only OPFs from Office of Federal Supply and Services stock (Standard Form 66) for the folders required by this part.

§ 293.306 Use of existing folders upon transfer or reemployment.

When an agency hires a person who has served on or after April 1, 1947, in a position subject to this part, it shall request the transfer of the OPF pertaining to the person's employment. The folder so obtained shall be used in lieu of establishing a new OPF. In the event that the prior service occurred wholly before April 1, 1947, the agency shall request any files or records that may be located in the Federal records storage center. The request shall note that because of the dates of service there will likely be no OPF. Any such file or record found for this individual shall be incorporated into the OPF being established for the employee.

(a) When a person for whom an OPF has been established transfers from one agency to another, the last employing (losing) agency shall, on request, transfer the OPF to the new employing agency.

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the folder, except for PMRS employees' performance ratings of record including the performance plan on which the most recent rating was based;

(2) Transfer performance ratings of record and the performance plan on which the most recent rating was based from the Employee Performance File of PMRS employees to their Official Personnel Folder, if the ratings and plans are not maintained by the agency in the Official Personnel Folder; and

(3) Ensure that all permanent documents of the folder are complete, correct, and present in the folder in accordance with FPM Supplement 293-31.

[50 FR 3309, Jan. 24, 1985, as amended at 50 FR 35494, Aug. 30, 1985]

§ 293.307 Disposition of folders of former Federal employees.

(a) Folders of persons separated from Federal employment must be retained by the losing agency for 30 working days after separation, and may be retained for additional 60 days (90 days where administratively necessary, e.g., where an appeal or an allegation of discrimination is made or where an employee retires or dies in service). Thereafter, the OPF must be transferred to the General Services Administration, National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, Missouri 63118.

(b) When a former Federal employee is reappointed in the Federal service, the National Personnel Records Center (Civilian Personnel Records) shall, upon request, transfer the OPF to the new employing agency.

[50 FR 3309, Jan. 24, 1985; 50 FR 8993, Mar. 6, 1985]

§ 293.308 Removal of temporary records from OPFs.

The employing agency having possession of an OPF shall remove temporary records from the OPF before it is transferred to another agency. For these and also for temporary records of their current employees, maintenance of the records shall be in accordance with General Records Schedule 1, promulgated by the General Services Administration.

§ 293.309 Reconstruction of lost OPFs.

Agencies will take necessary precautions to safeguard all OPFs. In the event of a lost or destroyed OPF, the current (or last, in the case of a former Federal employee) employing agency shall take the necessary action to reconstruct the essential portions of the OPF as specified in the Federal Personnel Manual or other Office instructions.

§ 293.310 Response to requests for information.

The Office, or an agency in physical possession of an OPF in response to a third party Freedom of Information Act (FOIA) request may disclose information as provided in this subpart. A current employee's request for access to his/her own OPF (also included are employee performance file system folders and files) that cites the FOIA, as with all stated Privacy Act requests made by current employees, shall be processed in accordance with agency Privacy Act procedures consistent with Office regulations in Part 297 of this chapter. All requests for their OPFs from former employees, and FOIA requests for former employee OPFs, shall be referred to the Office's regional or area office nearest to the location of the requester.

§ 293.311 Availability of information.

(a) The following information from both the OPF and employee performance file system folders, their automated equivalent records, and from other personnel record files that constitute an agency record within the meaning of the FOIA and which are under the control of the Office, about most present and former Federal employees, is available to the public:

(1) Name;

(2) Present and past position titles and occupational series;

(3) Present and past grades;

(4) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials);

(5) Present and past duty stations (includes room numbers, shop designations, or other identifying information regarding buildings or places of employment); and

(6) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so interwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

(b) The Office or agency will generally not disclose information where the data sought is a list of names, present or past position titles, grades, salaries, performance standards, and/or duty stations of Federal employees which, as determined by the official responsible for custody of the information:

(1) Is selected in such a way that would reveal more about the employee on whom information is sought than the six enumerated items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of the FOIA.

(c) In addition to the information described in paragraph (a) of this section, a Government official may provide other information from these records (or automated equivalents) of an employee, to others outside of the agency, under a summons, warrant, subpoena, or other legal process; as provided by the Privacy Act (5 U.S.C. 552a(b)(4) through (b)(11)), under those Privacy Act routine uses promulgated by the Office, and as required by the FOIA.

Subpart D—Employee Performance File System Records

AUTHORITY: 5 U.S.C. 552a and 5 U.S.C. 4305 and 4315; E.O. 12107 (December 28, 1978); 5 U.S.C. 1103, 1104, and 1302; 3 CFR 1954-1958 Compilation; 5 CFR 7.2; E.O. 9830, 3 CFR 1943-1948 Compilation.

SOURCE: 47 FR 3080, Jan. 22, 1982, unless otherewise noted.

§ 293.401 Applicability of regulations.

This subpart applies to Executive agencies as defined in sections 105, 3132(a)(1) and 4301(1) of title 5, U.S. Code, including Military Departments (but not non-appropriated fund employees) as defined in section 102 of title 5, U.S. Code, and independent establishments as defined in section 104 of title 5, U.S. Code. Within those agencies, the requirements of this subpart apply to all employees occupying positions subject to civil service rules and regulations, including Senior Executive Service positions as defined in 5 U.S.C. 3132(a)(2).

§ 293.402 Establishment of separate employee performance record system.

(a) Copies of PMRS employees' performance ratings of record, including the performance plan on which the most recent rating was based, must be placed in either the employee's Official Personnel Folder (OPF) or in the Employee Performance File (EPF). However, ratings for all other employees, and all other performance-related documents, may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF, and removed whenever the OPF (except as required in § 293.404(b)) is transferred to another agency. PMRS performance ratings of record, including the performance plan on which the most recent rating was based, shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (long term) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by § 293.404(b)).

(b) Except for performance records maintained in the OPF consistent with paragraph (a) of this section, each agency having employees occupying a position described in § 293.401 shall provide for maintenance of performance-related records for such employees in this EPF system. The agency may elect to retain records in a separate file that is located in the same office with the OPF, or in an envelope kept in the OPF itself. If the agency determines that a separate EPF is cost-effective, such a file may be located in another designated agency office (as specified in the agency's written performance appraisal plan documentation) including with supervisors or managers (hereinafter referred to as rating officials) or with Performance Review Boards. Any supporting documents of their duties shall be kept in these files.

(c)(1) Agencies shall provide their employees access to their performance files (automated and manual). Such a request for access shall be processed in accordance with established agency procedures, consistent with Office of Personnel Management regulations regarding access to records contained in Part 297 of this chapter. Such access shall be provided to the employee or to the employee's designated representative, and such records may also be disclosed to other officials of the agency who have a need for the documents in the performance of their duties.

(2) All other requests for performance documents made to agency officials (e.g., Freedom of Information Act requests or requests made under the "routine use" provisions of the Privacy Act) shall be processed by the responsible agency official in accordance with agency procedures consistent with Office of Personnel Management regulations regarding disclosures of such records contained in Parts 293 and 297 of this chapter.

(3) Privacy Act requests for amendment of records maintained in this system shall be processed by the responsible agency official in accordance with agency procedures consistent with Office of Personnel Management regulations regarding amendment of records contained in Part 297 of this chapter.

(d) Agencies maintaining the EPF in an automated or microform system shall issue instructions that contain necessary procedures to ensure that the same requirements as in paragraph (c) of this section, relating to all manual records, are met.

[47 FR 3080, Jan. 22, 1982, as amended at 50 FR 35495, Aug. 30, 1985]

§ 293.403 Contents of employee performance files.

(a) A decision on what constitutes a performance-related document within the meaning of this subpart rests with the agency. Agency implementing instructions, for both incumbents of the Senior Executive Service and other positions, shall provide specific written guidance of the description of what constitutes the agency's official performance-related forms and documents.

(b) Agency implementing instructions describing such records shall indicate where and for how long they are retained and how and when they are to be destroyed. Such instructions shall also describe what records are considered to be performance-related (as specifically as is feasible) and shall include all performance-related records maintained as a system of records within the meaning of the Privacy Act. Such records would generally include:

(1) Any form or other document which records the performance appraisal, including appraisals leading to merit pay determinations.

(2) Any form or other document used by rating officials to recommend a personnel action affecting an employee (including a request for personnel action document, but only when the action is not effected) when the basis for the action (e.g., removal, reassignment, demotion, promotion, or merit pay or other performance award) is performance-related.

(3) Recommendations for training that are performance-related. (Documentation of completion of or attendance at training in excess of 8 hours is to continue to be filed in the OPF.)

(4) Any form or other document furnished in support of recommended actions such as those listed in paragraph (b)(2) of this section and the agency's final decision on the matter (e.g., a recommendation for merit pay or an agency decision to grant only one-half the comparability pay adjustment).

(5) Any form or other document which the rating official is required by the agency to keep during an appraisal period (e.g., quality control records, production records, or similar records used to track employee performance during the appraisal period.)

(6) Any form or other document regarding Performance Review Board decisions, including supporting documentation and any transcript of hearings or testimony from witnesses.

(7) Any form or other document regarding decisions or recommendations of agency Executive Resources Boards related to performance appraisal or actions resulting from performance appraisals.

(8) Appraisals of potential (e.g., in connection with an agency's merit promotion procedures) if agency implementing instructions specifically require or permit retention of a copy.

(9) Individual development plans.

(10) Copies of licenses, certificates of proficiency, or similar documents required of the position.

(c) General information about the employee, i.e., identification data, information concerning Federal and non-Federal employment experience, and information about any training programs the employee participated in may, if an agency deems it appropriate, be retained in this system.

§ 293.404 Retention schedule.

(a)(1) Except as provided in § 293.405(a), performance appraisals or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by the SES, be retained as prescribed below:

(i) Performance ratings of record, including the performance plans on which they are based, shall be retained for 3 years;

(ii) Supporting documents shall be retained for as long as the agency deems appropriate (up to 3 years);

(iii) Performance records superseded (e.g., through an administrative or judicial procedure) and performance-related records pertaining to a former employee (except as prescribed in § 293.405(a)) need not be retained for a minimum of 3 years. Rather, in the former case they are to be destroyed and in the latter case agencies shall determine the retention schedule; and

(iv) Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

(2) When an employee is reassigned within the employing agency, disposition of records in this system, including transfer with PMRS employees,

shall be as agencies prescribe, consistent with § 293.405(a).

(3) Appraisals of unacceptable performance, where a notice of proposed demotion or removal is issued but not effected, and all documents related thereto, manual and automated, pursuant to 5 U.S.C. 4303(d) must be destroyed after the employee completes one year of acceptable performance from the date of the written advance notice of the proposed removal or reduction in grade notice. Under conditions specified by an agency, and earlier destruction date is permitted and destruction must be no later than 30 days after the year is up.

(b) Performance records for Senior Executive Service appointees, including those serving under a Presidential appointment under 5 U.S.C. 3392(c), are to be retained as follows:

(1) Pursuant to 5 U.S.C. 4314(b) (3) and (4), Senior Executive Service appointees shall have their performance-related records maintained for five consecutive years (from the date the appraisal is issued) beginning with the effective date of appointment, including individuals receiving appointments pursuant to 5 U.S.C. 3593(b).

(2) When an appointee of the Senior Executive Service moves to another position in the Service, either with the same or a different agency, all appropriate performance-related documents five years old or less shall be forwarded in the Employee Performance File along with the individual's OPF.

(3) When an employee in the Senior Executive Service accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee's performance file shall be retained as long as the employee remains employed under that Presidential appointment. When the appointment ends, and the individual does not return to the Senior Executive Service, the employee's performance file shall be destroyed in accordance with agency procedures.

(c) Where any performance-related document is needed in connection with an ongoing administrative, negotiated, quasi-judicial, or judicial proceeding, and it continues to be retained in this system rather than another system, it may be retained for as long as necessary beyond the retention schedules identified in paragraphs (a) and (b) of this section.

(d) Screening and purging of folders/envelopes and rating official's work files for the purpose of compliance with these retention schedules shall be through any agency process insuring consistency with the requirements.

[47 FR 3080, Jan. 22, 1982, as amended at 50 FR 35495, Aug. 30, 1985]

§ 293.405 Disposition of records.

(a) When the OPF of a PMRS employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the "losing" servicing office shall include in the OPF all performance ratings of record that are 3 years old or less, including the performance plan on which the most recent rating was based. Also, the "losing" office will purge from the OPF all performance ratings more than 3 years old, and other performance-related records, according to agency policy established under § 293.404(a)(2) and in accordance with FPM Supplement 293-31.

(b) Consistent with transfer instructions pertaining to SES positions contained in this part, employee performance files shall be forwarded to gaining agencies at the same time as the OPF (5 CFR 293.207).

(c) Consistent with retention schedules promulgated in § 293.404, destruction of performance-related records shall be in accordance with agency procedures (e.g., by shredding or burning).

(d) If a former employee returns to an agency, a new employee performance file will be created unless the prior file for this employee is still available. The original file may be reactivated provided that, consistent with the retention schedules and destruction requirements promulgated in this subpart, the contents are properly disposed of.

(e)(1) It is the responsibility of the agency Personnel Director to insure the maintenance of employee performance files in accordance with this subpart and subparts A and B of this part,

Part 297 of this title, and with Office of Personnel Management guidance.

(2) This responsibility may be delegated in writing to other agency officials as appropriate. Implementing guidelines for agency performance appraisal systems shall provide written instructions for compliance with Office rules and procedures as well as descriptions of the documents and where they are retained, and shall ensure that records are retained in accordance with the provisions of § 293.402.

[47 FR 3080, Jan. 22, 1982, as amended at 50 FR 35495, Aug. 30, 1985]

§ 293.406 Disclosure of records.

Disclosure as used here means the furnishing of the record to someone other than the individual to whom the record pertains, his/her designated representative, or to an agency official who needs the information in the performance of official duties. Disclosure of information from this file system shall be made only as permitted by the Privacy Act (5 U.S.C. 552a(b)) and, with regard to the routine use provisions of that section, only under a routine use published by the Office for the system of records covering these records. However, to the extent that this system contains the data identified as being available to the public in § 293.311, for most Federal employees and under the same restrictions listed in that section, that information shall also be made available to the public from this system.

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—General Provisions

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AUTHORITY: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

SOURCE: 50 FR 3310, Jan. 24, 1985, unless otherwise noted.

Subpart A—General Provisions

§ 294.101 Purpose.

This part states the time, place, fees, and procedures to follow in requesting information from the Office of Personnel Management.

§ 294.102 Definitions.

In this part:

(a) "Information" has the same meaning as does the term "agency records" in section 552 of title 5, United States Code.

(b) "Disclose or disclosure" means making information available, on request, for examination and copying, or furnishing a copy of the information.

§ 294.103 Access to the requester's own records.

When a request for a record from a Privacy Act system of records, as defined by 5 U.S.C. 552a(a)(5), comes from the subject of the record, or the subject's duly authorized representative, and the record is retrieved by the subject's name or other personal identifier, then the Office will handle the request under the procedures in 5 CFR Part 297.

§ 294.104 Information available—Indexes of certain records.

The Office maintains, and completely revises at mid-year and updates quarterly, *Index to Information*, OPM Document No. 1, an index of materials published and offered for sale or available for public inspection and copying.

A copy of this index is available at no cost from:

Internal Distribution Subunit, Room B443, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

The Office indexes these materials for the convenience of the public. Indexing does not constitute a determination that all of the materials listed are within the category of those required to be indexed by 5 U.S.C. 552(a)(2). Most publications may be consulted in the OPM Library, Room 5H27, at the above address.

§ 294.105 Places to obtain information.

(a) A requester who believes that the Office headquarters in Washington, D.C., has the desired information should address the request to the associate director or head of other office indicated in the list in paragraph (b) of this section. The address for all such requests is:

Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

(b) The following lists the groups and offices of the Office in Washington, D.C., and their principal areas of responsibility:

Submit to—	For subject-matter about—
Associate Director for Administration.	Grants to State and local governments.
Associate Director for Compensation.	Employee compensation: pay, leave, retirement, insurance, and benefits, and incentive and performance pay guidelines.
Assistant Director for Agency Compliance and Evaluation.	Personnel management evaluations of agencies; appellate decisions on position classification, job grading, retained grade, and retained pay, Fair Labor Standards Act complaints decisions; and information about agency compliance with personnel laws, rules, and regulations.
Assistant Director for Workforce Information.	Government-wide statistical personnel information; and information principally in the Official Personnel Folder and the central personnel data file.
Assistant Director for Personnel Investigations.	Background investigations of Federal employees and applicants for Federal employment.
Associate Director for Staffing.	Nationwide recruiting and job information; examining services for entry and promotion; selection methods; position classification standards; qualification standards; examination rating reviews; test scoring services; reduction-in-force policy; student employment programs; non-competitive case file records; and the Administrative Law Judge Program.
Associate Director for Workforce Effectiveness and Development.	Productivity and quality of work life; development of Government-wide occupational health programs; employee relations, discipline, and performance evaluation; incentive awards; job-related training, training information, and training available to Government employees, including developing and training executives; equal employment opportunity and affirmative action; veteran preference, the Presidential Management Intern Program and intergovernmental mobility; delegation agreements.
Assistant Director for Employee, Labor and Agency Relations.	Technical information and policy guidance about management and employee unions in the Federal service.
Assistant Director for Planning and Evaluation.	Merit system standards.
Director, Office of Government Ethics.	Executive branch policy relating to ethics and conflict of interest.
Assistant Director for Executive Personnel.	Senior Executive Service, selection of Federal executives.

(c) Direct a request for information on a subject not specifically referred to in this section or in the index, to:

Information Systems Plans and Policies Branch, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415

(d) A person who believes that a regional office, area office, or post of duty of the Office has the desired information should send the request to the Regional Director, Office of Personnel Management Regional Office, at the appropriate address indicated in the following list:

John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109
Jacob K. Javits Building, 26 Federal Plaza, New York, New York 10278
William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, Pennsylvania 19106
Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303
John C. Kluczynski Federal Building, 30th Floor, 230 South Dearborn Street, Chicago, Illinois 60604
1100 Commerce Street, Dallas, Texas 75242
300 Old Post Office Building, 815 Olive Street, St. Louis, Missouri 63101
Denver Federal Center, Building 20, Denver, Colorado 80225
211 Main Street, 7th Floor, San Francisco, California 94105

Henry M. Jackson Federal Building, 26th Floor, 915 Second Avenue, Seattle, Washington 98174

(e) If an OPM group or office receives a request for information it does not have the recipient office will promptly forward the request to the appropriate group or office and will notify the requester that it has done so. However, for purposes of applying the time limits in section 552 of title 5, United States Code, the request will not be considered received until it arrives in the group or office having possession of the requested information.

§ 294.106 Procedures for obtaining information.

(a) A person may request information under section 552 of title 5, United States Code, by letter directed to one of the groups and other offices listed in § 294.105, or deliver a request in person at the addresses listed in that section during business hours on a regular business day.

(b) Each request for information under section 552 of title 5, United States Code should clearly and prominently have a notation on the first page, such as "Freedom of Information Act Request." In addition, if sent by mail or otherwise submitted in an envelope or other cover, mark the outside clearly and prominently with "FOIA Request" or "Freedom of Information Act Request."

(c) A request under this part should reasonably describe the information being requested by including relevant data such as name, number, date, subject, title of publication, or other identifying particulars sufficient to enable the Office to identify and locate the information.

(d) Medical information about an applicant, employee, or annuitant may be disclosed by the Office or another Government agency to the applicant, employee, or annuitant, or a representative designated in writing, except that medical information concerning a mental or other condition of such a nature that a prudent physician would hesitate to inform a person suffering from it of its exact nature and probable outcome may be disclosed only to a licensed physican designated in writing for that purpose by the individual or his designated representative.

(e) If a request includes materials published and offered for sale, e.g., by the Superintendent of Documents, the Office will advise the requester of the appropriate group or other office where the requester may review, and location where the requester may purchase, the materials.

(f) Except in unusual circumstances [as defined in 5 U.S.C. 552(a)(6)(b) (i), (ii), and (iii)], the Office will determine whether to disclose or deny the requested information within 10 working days after receipt of the request (excluding Saturdays, Sundays, and holidays) and will notify the requester immediately of its determination and the fees required, if any, as prescribed by § 294.107.

[50 FR 3310, Jan. 24, 1985; 50 FR 8993, Mar. 6, 1985]

§ 294.107 Service charges for information.

(a) The Office will furnish reasonable quantities of information that it has had printed or otherwise reproduced for the purpose of making it available to the public without charge.

(b) The Office may furnish information made available to the public, other than that described in paragraph (a) of this section, subject to payment of a fee. Pay the fee by check or money order, payable to the Office of Personnel Management.

(c) Schedule of Fees—When responding to a request for information under section 552 of title 5, United States Code, the Office will charge fees for searching and duplicating the information at the following rates:

Photocopies per page	$0.10
Printed material per 25 pages or fraction thereof	.25
Manual records search, per hour:	
Professional employees	9.00
Clerical employees	5.00
Automated Records search:	
Programming, per hour	17.00
Keypunching, per 1,000 card-image records	183.00
Duplication, per hour	45.00
Computer time, per quarter-hour	219.00

(Charges will be assessed only for actual resources used.)

(d) Unless the request specifically states that the requester will accept any cost involved, or specifies an amount acceptable to the requester and sufficient to cover anticipated costs, the Office will not count as received a request which reasonably may exceed $25 in assessed fees until the requester, after prompt notification of the anticipated cost of the request, agrees to bear it.

(e) When the anticipated fees exceed $50, the requester must deposit at least 50 percent of the amount anticipated within 30 days after notification of that fact. The Office will not release the requested information until it has received the deposit.

(f) The Office will assess charges in cases of unproductive or unsuccessful searches unless an appropriate Office official waives charges. Services requested and performed but not required under the Freedom of Information Act, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes, depending upon the services performed.

(g) The Office will furnish information under the Freedom of Information Act without charge or at a reduced charge when the official considering the request for information finds waiver or reduction of fee in the public interest because furnishing the information primarily benefits the general public.

§ 294.108 Appeal of a denial of information.

(a) A person may appeal a denial by an OPM official of a Freedom of Information Act request to:

General Counsel, U.S. Office of Personnel Management, Washington, D.C. 20415

(b) A person may appeal denial of a Freedom of Information Act request for information maintained by the General Counsel of the OPM to:

Deputy Director, U.S. Office of Personnel Management, Washington, D.C. 20415

(c) If an official of another agency denies a Freedom of Information Act request for information in one of OPM's Government-wide systems of records (see FPM Chapter 297, Appendix, for a list of these systems), the requestor should consult the agency's regulations for any appeal rights that may apply. An agency may, at its discretion, direct these appeals to OPM's General Counsel.

(d) An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement why the appellant believes the denying official erred.

(e) The appeals provided for in this section constitute the final levels of administrative review that are available. If a denial of information is affirmed, the requester may seek judicial review in the district court of the United States in the district in which he or she resides, or has his or her principal place of business, or in which the agency records are situated, or in the District of Columbia.

[50 FR 3309, Jan. 24, 1985; 50 FR 8993, Mar. 6, 1985]

§ 294.109 Custody of information; subpoenas.

(a) The Chief, Information Systems Plans and Policies Branch, Office of Management, has official custody of the official records of the Office. A subpoena or other judicial order for an official record from the Office should be served on the:

Chief, Information Systems Plans and Policies Branch, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

(b) See § 297.505 of this chapter for the steps other officials should take on receipt of a subpoena or other judicial order for an official personnel record.

Subpart B—The Public Information Function

§ 294.201 Public information policy.

(a) In addition to the basic policies of the Office relative to the disclosure of information when requested by a member of the public, the Office has an independent public information policy for bringing to the attention of the public through news releases, publications of the Office, or other methods, information concerning the functions of the Office as a Federal agency, and the programs administered by the Office.

(b) The Assistant Director for Public Affairs carries out the public information policy of the Office. In addition, each employee of the Office shall cooperate in carrying out this policy.

Subpart C—Office Operations

§ 294.301 Policy and interpretations.

(a) Statements of Office policy and interpretations of the laws and regulations administered by the Office which the Office has adopted, whether or not published in the Federal Personnel Manual or the FEDERAL REGISTER, are available to the public.

(b) Generally, memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material, when prepared for the purpose of internal communication within the Office or between the Office and other agencies, organizations, or persons, are not available to the public.

Subpart D—Cross References

§ 294.401 Cross References.

The table below provides assistance in locating OPM regulations in 5 CFR on disclosure of information not covered by Part 294:

Type of information	Location
Classification appeal records	511.616
Classified information	175.101
Examination and related subjects records	300.201
Grade and pay retention records	536.307
Investigative records	736.105
Job grading reviews and appeals records	532.706
Leave records	297.502
Medical information	297.213
Official Personnel Folders	297.503 293.311
Protection of privacy and personnel records	297
Retirement	831.106

PART 297—PROTECTION OF PRIVACY AND PERSONNEL RECORDS

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AUTHORITY: Sec. 3, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

SOURCE: 44 FR 65036, Nov. 9, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 297.101 Purpose and scope.

(a) These regulations implement the provisions of Pub. L. 93-579, the Privacy Act of 1974 (5 U.S.C. 552a). The regulations govern the types of systems of personnel records listed below and which are more thoroughly identified in the annual publication of the Office's notices of systems of records.

(1) Internal systems of personnel records established and maintained by the Office of Personnel Management (OPM) solely on its own employees and which are under its physical control.

(2) Centralized systems of personnel records physically established and maintained by the Office of Personnel Management on most current and former Federal employees and some applicants for Federal employment.

(3) Government-wide systems of personnel records that are maintained by agencies on their employees or on applicants for employment for the Office of Personnel Management and which are in the physical custody of agencies. Though such records are in the physical custody of agencies, the Office of Personnel Management has retained authority under the Privacy Act to make reviews of initial agency determinations regarding access to and amendment of records in these systems.

(b) For the purposes of this part, the term "agency" applies to any department or independent establishment in the Executive Branch of the Federal Government, including a Government corporation or Government controlled corporation, except those specifically excluded from Office of Personnel Management recordkeeping requirements by statute, Office of Personnel Management regulation, or formal agreement between the Office of Personnel Management and that agency.

§ 297.102 Definitions.

For the purpose of this part, the terms used herein have the same meanings as defined in the Privacy Act, 5 U.S.C. 552a. In addition:

"Access" means providing a copy of a record to, or allowing review of the original record by the data subject or the data subject's authorized representative, parent, or legal guardian;

"Act" means the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a;

"Amendment" includes correction, addition, deletion, or destruction of the record or specific portions thereof;

"Annual Report" means that report required to be submitted by each Federal agency to the Office of Management and Budget by April 30th of each year identifying its activities under the Privacy Act for the preceding calendar year;

"Data subject" means the individual to whom the information pertains and by whose name or other individual identifier the information is retrieved;

"Disclosure" means providing personal review of a record, or a copy thereof, to someone other than the data subject, the data subject's authorized representative, parent, or legal guardian;

"Notice of system of records" means the notice, published in the FEDERAL REGISTER, of the existence and character of every system of record, hereinafter referred to as system notice;

"Office" means the Office of Personnel Management;

"Personnel record" means any record concerning an individual which is maintained and used in the personnel management or personnel policy-making process; and

"System Manager" means the agency official, designated by the head of the agency, who has the authority to decide Privacy Act matters relative to each system of records maintained by agency.

§ 297.103 Designations of authority by system manager.

The responsible Office or agency system manager having jurisdiction over a system of records may designate in writing an agency employee either at the agency's headquarters or field office to evaluate and issue the agency decision on Privacy Act matters relating to the system of records. The designee should have ready access to the record involved, and be knowledgeable in all matters concerning what comprises the system of records and the basis for deciding Privacy Act issues.

Subpart B—Individual Rights Regarding Access, Amendment, and Disclosure

§ 297.201 Identification requirements for specific inquiries and requests for access.

(a) Unless the information sought is required to be released under the Freedom of Information Act or other statute, the Office or agency shall require proof of identity from a requester, and reserves the right to determine the adequacy of any such proof of identity before responding to a specific inquiry or request for access to a record in a system of records. The general identifying information items that a system manager may ask to be furnished before a specific inquiry or request for access is granted include:

(1) Full name, signature, and home address;

(2) Date and place of birth;

(3) The current or last place and dates of Federal employment, if appropriate; and

(4) Social Security Number (for systems of records retrieved by this identifier).

(b) A request/inquiry from someone other than the data subject shall contain copies of any documents that establish the relationship or authorize access as follows:

(1) Where the requester is the parent or legal guardian of a data subject who is a minor, the requester shall identify the relationship with the data subject and furnish a certified or authenticated (e.g. notarized) copy of any document establishing parentage or appointment as legal guardian;

(2) Where the requester is the legal guardian of a data subject who has been declared incompetent by the courts, the requester shall identify the relationship with the data subject and furnish a certified or authenticated copy of the court's appointment of guardianship;

(3) Where the requester is a representative of the data subject, the requester shall identify the relationship with the data subject or the data subject's parent or legal guardian, and furnish documentation designating the representative as having the authority to act on behalf of the data subject.

(c) When the requester appears in person and cannot be identified by sight and signature, proof of identify is required as follows:

(1) When a request is from the data subject, the means of proof, in order of preference, are:

(i) A document bearing the individual's photograph and signature (for example, driver's license, passport, or military or civilian identification card); or

(ii) Two documents bearing the individual's signature (for example, medicare card, unemployment insurance book, employer identification card, national credit card, professional, craft, or union membership card);

(2) When a request is made by the parent, legal guardian, or authorized representative of the data subject, the means of identifying the requester and his or her authority for acting on behalf of the data subject, shall be as prescribed in paragraphs (b) and (c) of this section. In addition, the requester shall establish the identity of the data subject in the manner prescribed in paragraph (a) of this section.

(d) When a written inquiry or request is received from the data subject, or from the data subject's parent, legal guardian, or authorized representative, it should be signed and

(1) For an inquiry, contain sufficient identifying information about the data subject to permit searching of the record system(s) and to permit response and

(2) For a request: (i) From the data subject, contain sufficient information to locate the record and establish that the requester and the data subject are the same (e.g. matching signatures); or

(ii) From the data subject's parent, legal guardian, or authorized representative, contain sufficient information to locate the record, match identity with the data subject, and such documentation of association or authorization as is prescribed in paragraph (b) of this section.

(e) The signed request from the data subject, or from the data subject's parent, legal guardian, or authorized representative specified in paragraph (d) of this section shall be sufficient proof of identity of the requester, unless for good cause the system manager or designee determines that there is a need to require some notarized or certified evidence of the identity of the requester.

(f) The system manager or designee may modify the type of proof of identity required and the method by which it is provided, on a case-by-case basis and within the limits prescribed in paragraphs (a), (b), and (c) of this section.

(g) In compliance with 5 U.S.C. 552a(e)(3), each requester that is asked to supply the information, orally or in writing, in accordance with this section shall be furnished the following information:

(1) 5 U.S.C. 552a authorizes solicitation of the information, disclosure is voluntary, and no penalty is attached for failure to provide the information;

(2) This information will be used to process the inquiry or request under the Act and for any other actions that may arise under the Act regarding the specific inquiry or request; and

(3) The effects of not providing all or any part of the information may be to render impossible or to delay the Office's or the agency's ability to locate and identify the records necessary to the processing of and action on the inquiry/request.

(h) When provisions of this section are alleged to have the effect of impeding an individual in exercising rights of access, the Office or the agency will consider from the individual making the request, alternative suggestions regarding proof of identity and authority for access to records.

§ 297.202 Inquiries.

(a) *General.* Inquiries about the Act or this part may be made in person or by mail at any OPM or agency office. A list of OPM regional and area offices is included in the appendix to the notice of OPM systems of records published annually in the FEDERAL REGISTER. A general inquiry would be a request for assistance in identifying which systems of records may contain a record about the individual. A requester is not required to submit identifying information in support of this type of inquiry.

(b) *Specific.* An inquiry that requests OPM or any agency to determine if it has, in a given system of records, a record about the inquirer, should be addressed to the official identified in the Notification procedures paragraph of the FEDERAL REGISTER notice for the system. Inquirers should specify the name of the system of records, if known, as published in the FEDERAL REGISTER and inquiries submitted by mail should contain the words "Privacy Act Inquiry" on the face of the envelope and the letter. Such inquiries should contain the identifying data prescribed in § 297.201 of this subpart before a search can be made of that particular system of records.

§ 297.203 Requests for access to personnel records.

(a) A data subject shall be granted access to the data subject's own records upon request, except where denial is authorized under § 297.205(b) of this subpart. To request access, the individual should contact the appropriate system managers (or designees) indicated in the OPM's notices of system of records published in the FEDERAL REGISTER. Requests may be made in person or by mail. Requests should specify the name of the system of records, if known, as published in the FEDERAL REGISTER. Requests submitted by mail should contain the words "Privacy Act Request" on the face of the envelope and the letter. All individuals requesting access to records must meet the identification requirements set forth in § 297.201 of this subpart. Agencies may provide forms to facilitate the servicing of requests under the Act.

(b) When an individual cites the Freedom of Information Act (5 U.S.C. 552) or request records about himself or herself which are contained in a Privacy Act system of records, the request will be processed under the Privacy Act. However, no Privacy Act exemption will be cited to deny access to a record which would otherwise be available under the Freedom of Information Act.

§ 297.204 Methods of access.

(a) The following are the methods for allowing access to records when such access has been granted by a system manager or designee:

(1) Inspection in person may be made in the office designated in the system notice during the hours specified by OPM or the agency; or

(2) Records may be transferred, at the determination of the agency or OPM, to an agency or OPM office or other Federal facility more convenient to the data subject for review; or

(3) Generally, agency and OPM offices will not furnish certified copies of records. Where copies of records are to be furnished, they may be mailed at the request of the data subject or, as determined by the agency or OPM, only after payment of any fee levied in accordance with § 297.212 is received.

(b) Where the requester seeks to obtain original documents, the Office or agency reserves the right to limit the request to copies of the original records. In no event shall original records be made available for review by an individual except in the presence of the system manager or designee. Title 18 U.S.C. 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or attempt to do any of the foregoing.

(c) Special procedures may be applied when processing requests for medical records where the records contain information about medical conditions of such a nature that a prudent physician would hesitate to inform a person suffering from those conditions of their exact nature or probable outcome. If the procedures are to be applied, it shall be required that the information sought be released only to a licensed physician designated in writing for that purpose by the data subject or the data subject's authorized representative, parent, or legal guardian.

(d) During access, OPM or agency official shall supply necessary information and assistance to the data subject. The OPM or agency official shall furnish intelligible copies of any releasable information for which the data subject requests copies (in accordance with § 297.212.

(e) The data subject, or the data subject's parent, legal guardian, or authorized representative may be accompanied by someone of his or her choice during personal access and shall authorize the presence of the accompanying individual in a signed and dated statement containing the name of the accompanying individual and a specific description of the record to which access is sought. Neither the data subject nor his or her representative shall be required to justify the decision to be accompanied during access to a record. Access in this instance includes discussion of the record in the presence of the accompanying individual.

§ 297.205 Denials of access requests.

(a) If an access request is denied, the system manager or designee shall give the requester the following information:

(1) The system manager's or designee's name, position title, and business mailing address;

(2) The date of the denial;

(3) The reasons for the denial, including citation of appropriate sections of the Act and this part; and

(4) The individual's opportunities for further administrative consideration, including the name, position title, and address of the OPM official responsi-

ble for the review as stated in § 297.206.

(b) Denial of a request for access to records will be made only by the system manager or designee and only upon a determination that:

(1) The record is subject to an exemption under § 297.304 of Subpart C of this part when the system manager has elected to invoke the exemption;

(2) The record is information compiled in reasonable anticipation of a civil action or proceeding; or

(3) The data subject refuses to abide by special procedures for access to records enumerated in § 297.204(c).

§ 297.206 Request for administrative review of denial of access.

(a) For denials of access made under § 297.205(b) of this subpart, the following procedures apply;

(1) For denials made by the agency, when the record is maintained in one of the Office's Government-wide systems of records where the notice for that system has delegated to the agencies the authority to make initial decisions to grant or deny access, a request for administrative review of a denial shall be made only to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415; and

(2) For denials made by an OPM official, a request for administrative review of the denial shall be made only to the General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

(b) The OPM official shall acknowledge receipt of a request for administrative review of a denial of access within ten working days. A decision on the request should accompany this acknowledgement, whenever possible. If it is not possible to reach a decision within ten working days, the requester shall be informed of the approximate date (within thirty working days) when such a decision may be expected.

(c) In reaching a decision, the OPM official will review the criteria, prescribed in § 297.205 of this part, which were cited as the basis for denying access and may seek additional information as deemed necessary.

(d) When a decision is reached, the requester will be informed of the decision; the basis for the decision; the name, position title and business mailing address of the official responsible for the decision; what further action, if any, may be necessary on the part of the agency; and the requester's right to seek judicial review of the decision.

§ 297.207 Judicial review.

Upon receipt of notification that the denial of access has been upheld on administrative review, the requester has the right to judicial review of the decision for up to two years from the date on which the cause for action arises or is discovered. Judicial review may be sought in the district court of the United States in the district in which the requester either resides, has his or her principal place of business, where the agency records are situated, or in the District of Columbia.

§ 297.208 Request for amendment of record.

(a) Data subjects may request the amendment of their records in writing or in person by contacting the system manager or designee indicated in the notice of systems of records published by the Office in the FEDERAL REGISTER. Requests by mail will be expedited if the words "PRIVACY ACT AMENDMENT REQUEST" appear in capital letters on the face of the envelope and enclosed letter. Misaddressed or misdirected requests will be forwarded promptly to the proper office. Time limits prescribed in § 297.306 of Subpart C of this part will be measured from receipt at the proper office. In each instance when a forwarded request is received, the receiving office shall notify the data subject that the request was improperly addressed or marked, and the date when the request was received in the proper office.

(b) A request for amendment should include the following:

(1) The precise identification of the records sought to be amended (for example, description, title, date, paragraph, sentence, line, and words);

(2) The specific material to be deleted, if any;

(3) The specific material to be added, if any, and the exact place at which it is to be added; and

(4) A statement of the reasons for the request, with all available documents and materi[illegible]t substantiate the request.

(c) If necessary, [illegible]icial authorized to rule on a request for amendment may seek additional information pertinent to the request to assure that a fair, equitable, and accurate decision is reached.

§ 297.209 Response to request for amendment of records.

(a) The system manager or designee must respond in writing to the requester for amendment of a record within 10 working days of receipt. This response shall inform the request of the decision, whenever possible.

(b) If the decision cannot be reached within 10 working days, the requester shall be informed of the reason for delay and the date (within 20 working days) it is expected that the decision will be made.

§ 297.210 Request for administrative review of denial of an amendment.

(a) (1) A request for administrative review of agencies' denials to amend a record in an OPM system of records shall be addressed to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(2) A request for administrative review of a denial to amend a record by an OPM official shall be addressed to the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(b) All requests for review of denials must be made in writing and signed by the data subject. Processing will be expedited if the words "PRIVACY ACT AMENDMENT APPEAL" appear in capital letters on both the envelope and at the top of the appeal papers. Misaddressed or misdirected requests will be forwarded immediately to the proper office. The time limit for response shown in § 297.308 of this part will be measured from the time of receipt in the proper office.

(c) When a request for administrative review of an amendment denial is submitted, the individual must provide a copy of the original request for amendment, a copy of the initial denial, and a statement of the specific reasons why the initial denial is believed to be in error.

(d) When a decision is reached, the requester will be informed of the decision; the basis for the decision; the name, position title and business mailing address of the official responsible for the decision; what further action, if any, may be necessary on the part of the agency; and the requester's right to seek judicial review of the decision.

§ 297.211 Judicial review.

Upon receipt of notification that the denial to amend a record has been upheld on administrative review, the requester has the right to judicial review of the decision for up to two years from the date on which the cause for action arises or is discovered. Judicial review may be sought in the district court of the United States in the District in which either the requester resides, has his or her principal place of business, where the agency records are situated, or in the District of Columbia.

§ 297.212 Fees.

(a) Generally, the policy of the Office is to provide the first copy of any record or portion thereof, furnished as a result of a Privacy Act request for access, at no cost to the data subject or authorized representative. However, in cases where the Office or agency deems it appropriate (e.g., where the record is voluminous) the system manager or designee at his or her discretion may charge a fee when the cost for copying the record would be in excess of ten dollars ($10.00).

(b) The schedule of OPM fees for duplication appears in Part 294 of this chapter.

(c) Where an agency has established a different fee schedule for the duplication of records it may use that schedule.

(d) There shall be no fees charged or collected from a data subject for the following: Search for or retrieval of the data subject's records; review of the records; making a copy of a record when it is a necessary part of the process of making the record available for review; copying at the initiative of the Office or an agency without a request from the individual; transportation of the record; and making a copy of an amended record to provide the individual with evidence of the amendment.

(e) When a fee is requested, the check or money order shall be made payable to the agency and sent to the appropriate system manager or designee.

§ 297.213 Disclosures generally prohibited.

Generally, the Office or any agency may not disclose any record in an OPM system of records to any person or another agency, other than the data subject, unless the disclosure is:

(a) Pursuant to the specific written statement of the data subject authorizing a representative to gain access to the data subject's record, as prescribed in § 297.201 of this subpart;

(b) To anyone or any other agency that requests the data, provided the prior specific written consent of the data subject is obtained;

(c) To a parent of a minor data subject or the legal guardian of a data subject in accordance with 5 U.S.C. 552a(h) and § 297.201 of this subpart;

(d) Among the disclosures without prior consent of the data subject permitted by 5 U.S.C. 552a(b)(1) through (11), and as listed in § 297.503 of Subpart E of this part; or

(e) Required by the Privacy Act and not covered explicitly by the disclosure provisions of 5 U.S.C. 552a(b).

§ 297.214 Request for accounting of disclosures.

(a) Except for disclosures to agency officials who have a need for access to the record, to Office employees requiring access to the Records, or required by the Freedom of Information Act, all disclosures from an OPM Government-wide system of records shall be accounted for by the keeping of a written record of the disclosure as outlined in § 297.508 of this part. An individual may request access to the accounting of disclosures of the individual's record by submitting a Privacy Act request for any such accounting to the appropriate system manager or designee for the appropriate system of records.

(b) The system manager or designee shall respond to such a request within ten working days and shall inform the requester, for each disclosure made: the description of the record disclosed; the date, method, and purpose of each disclosure; the name and address of the person to whom the disclosure was made; and the name and position title of the person making the disclosure.

(c) The only basis for not furnishing an accounting of disclosure is where that disclosure was made under 5 U.S.C. 552a(b)(7). Although such an accounting must be retained, when the system manager or designee is processing a request for access to the accounting of disclosures made from an individual's records, disclosures under 5 U.S.C. 552a(b)(7) will not be provided.

Subpart C—Agency Responsibilities for Processing Privacy Act Requests

§ 297.301 Responsibilities.

(a) All agencies are responsible for protection of individual privacy in their personnel management processes. Each agency is responsible for:

(1) Its internal systems of personnel records for which agencies have sole responsibility; and

(2) Government-wide systems of personnel records which the Office manages and for which agencies and OPM share responsibilities.

(b) The Office is responsible for describing the division of required Privacy Act functions between OPM and the agencies for the Government-wide systems of personnel records OPM manages. This division of functions is described in this part, and in Chapters 293 and 297 of the Federal Personnel Manual.

(c) The Office or agency must respond to all reasonable inquiries concerning the Privacy Act or the regulations contained within Part 297.

§ 297.302 Verification of identity of requester.

The Office or agency shall verify the identity of an individual either requesting access or amendment to the individual's own records or submitting a specific inquiry as defined and in accordance with requirements prescribed in § 297.201 of this part. Alternatively, the system manager or designee may accept other proof of identity commensurate with any unusual circumstances surrounding the request.

§ 297.303 Response to access requests.

(a) *Time limits.* The Office or agency must respond within ten working days after receipt by the system manager or designee to each specific inquiry or request for access. If the requested data or an answer to a specific inquiry cannot be furnished within the ten day period, the response will be sent within that time giving the status of the matter, the expected date the material or answer will be furnished, or requesting any additional information needed to process the specific inquiry or request for access. Action will be completed as soon as possible thereafter, but not later than 20 working days after receipt of the original specific inquiry, request for access, or receipt of the additional information that was requested.

In unusual circumstances and for good cause, an OPM or agency official may decide that action cannot be completed within 20 days. In such a case, the OPM or the agency official will advise the individual of the reason for the delay and the date (not to exceed an additional 20 working days) by which action can be expected to be completed. Unusual circumstances would exist, for example, when the record must be retrieved from archival storage or requested from another agency, when a voluminous amount of material must be reviewed, or where information on other individuals must be separated or deleted from a particular record.

(b) *Granting of access.* The system manager or designee shall make the entire contents of the requested record available to a properly identified data subject or the data subject's authorized representative, except for data that:

(1) Is subject to a properly promulgated exemption and for which the exemption has been applied (§ 297.304)

(2) Requires special procedures for access (§ 297.204); or

(3) Is withheld in reasonable anticipation of a civil proceeding (§ 297.205(b)(2)).

Generally, the Office's policy is that there shall be no charge for the first copy of the information being requested. Thereafter, copies of the same records will be furnished on request in accordance with the fee schedule listed in Part 294 of this chapter. The system manager or designee, at his or her discretion, can elect to furnish a copy of the material to the requester in person or by mail.

(c) *Denial of access.* Where it is necessary for the system manager or designee to deny access to all or any part of the requested record, the decision must be based on one of the reasons for denial set forth in § 297.205 of Subpart B of this part. In addition to providing the requested information about the denial which is prescribed by § 297.205(a) of this part, the Office or agency official claiming an exemption from the access provisions of the Privacy Act will:

(1) Inform the requester when any portion of the record is exempt and, where appropriate, clearly describe any material in the record that is exempt in its entirety, in such a manner that will enable the requester to know of the existence of such material and to be able to sufficiently describe it in any request for review of the decision exempting it; and

(2) Inform the requester of the basis for any denial and his or her right to appeal the decision to exempt any part or all of the requested record, to the Assistant Director for Agency Compliance and Evaluation, in the case of an agency denial, and in the case of an OPM denial, to the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

§ 297.304 Exempt records.

(a) Several OPM Internal, Central, and Government-wide systems of records contain information for which exemptions appearing at 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6) may be claimed, the systems of records for which the exemptions are claimed, the specific exemptions determined to be necessary and proper with respect to these systems of records, the records exempted, the provisions of the Act from which they are exempted, and the justifications for the exemptions are set forth below.

(b) Specific exemptions.

(1) Administrative Law Judge Applicant Records (OPM/CENTRAL-6).

(i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigatory material compiled solely for the purposes of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(2) Litigation and Claims Records (OPM/CENTRAL-7).

(i) When litigation or claims cases occur, information from other existing systems of records may be incorporated into the case file. This information may be material for which exemptions have been claimed by the Office in this section. To the extent that such exempt material is incorporated into a litigation or claim case file the appropriate exemption (5 U.S.C. 552a(k)(1), (2), (3), (5), or (6)) shall also apply to the material as it appears in this system. The exemptions shall be only from those provisions of the Act which were claimed for the systems from which the records originated.

(ii) During the course of litigation or claims cases, it may be necessary to conduct investigations to develop information and evidence relevant to the case. These investigative records may include material meeting the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6). Such material is exempt from the requirement of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Act relate to making accounting of disclosures available to the data subject and access to an amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(A) Such investigations may obtain from another Federal agency properly classified information which pertains to national defense and foreign policy. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d);

(B) Such investigations may obtain from another Federal agency investigatory material compiled for law enforcement purposes other than material within the scope 5 U.S.C. 552a(j)(2), e.g., administration of the merit system. All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(2) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of those records;

(C) Such investigations may obtain from another Federal agency information that relates to providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(3) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to or amendment of records by the data subject. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records;

(D) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigatory material compiled solely for the purposes of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source; or

(E) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment by the data subject of this information would compromise the objectivity and fairness of the testing or examination process.

(3) Privacy Act/Freedom of Information Case Records (OPM/CENTRAL-8). In paragraphs (1) through (5) and (7) through (9) of this section, the Office has claimed exemptions for other of its systems of records where it felt such exemptions are appropriate and necessary. These exemptions are claimed under 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6). During the course of a Privacy Act/Freedom of Information Act case (which may include access requests, amendment requests, and request for review for initial denials of such requests) exempt materials from those other systems may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems are entered into this system, the Office hereby claims the same exemptions for the records as they have in the original primary system of which they are a part.

(4) Personnel Investigations Records (OPM/CENTRAL-9). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records.

The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Personnel investigations may obtain from another Federal agency properly classified information which pertains to national defense and foreign policy. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Personnel investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of such records, under 552a(c)(3) and (d).

(iii) Personnel investigations may obtain from another Federal agency information that relates to providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject, and access to and amendment of records.

These exemptions are claimed because this system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal the identity of source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record.

(v) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(5) Presidential Management Intern Program Records (OPM/CENTRAL-11). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(6) Recruiting, Examining, and Placement Records (OPM/GOVT-5).

(i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigative material compiled solely for the purpose of determining the appropriateness of a request for approval of an objection to an eligible's qualification for employment in the Federal service. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosures of the record or access to or amendment of the record.

(ii) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access to an amendment of records by the subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualification for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(7) Personnel Research Test Validation Records (OPM/GOVT-6). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

[44 FR 65036, Nov. 9, 1979, as amended at 45 FR 52769, Aug. 8, 1980]

§ 297.305 Response to request for administrative review of denial of access.

(a) The Office will make every effort to reach a decision within ten working days on each request for administrative review of a denial of access. If a decision cannot be made within the ten day period, an acknowledgment will be sent within that time stating the status of the request, an expected date for the decision (within thirty working days); or, if necessary, a request for any additional information required to complete processing of the request. A decision shall be reached within thirty working days after receipt of the original request or receipt of the additional information. In unusual circumstances and for good cause, the Office may decide that a decision cannot be reached within thirty working days. In such a case, the Office will advise the requester of the reason for the delay and furnish a date by which the decision can be expected. Unusual circumstances would exist, for example when the record must be retrieved from archival storage or from various locations or when there is a voluminous amount of material to be reviewed.

(b) The requester shall be notified in writing of the Office's decision. If the decision upholds the denial for access, the reason for the decison must be given, along with the name and position title of the official responsible for the decision, and the procedures whereby the requester may seek judicial review of the decision. If the decision is to grant access to the material previously denied, the Office shall inform the requester of the action it has taken to provide the record previously withheld. The Office shall direct the system manager or designee to make available to the requester all or part of the data that was withheld. Where only part of the data originally withheld is to be granted on administrative review, then the Office shall inform the requester of the reasons for sustaining part of the denial, the name and position title of the official responsible for the decision, and the procedures whereby the requester may seek judicial review of the decision.

(c) The system manager or designee who issued the initial denial decision is responsible for providing the record which was the subject of the access request, and must otherwise cooperate with the reviewing official.

§ 297.306 Request for correction/amendment.

(a) Upon receipt of a request to correct or amend a record, when the Office or agency finds that the request is not in accordance with the requirements prescribed in § 297.208 of Subpart B of this part, the Office or agency shall in writing, communicate this determination to the requester and solicit clarification. From the standpoint of meeting time limits, the request shall not be considered received until such clarifying information is received.

(b) The Office or agency must respond in writing to a request to amend a record within ten (10) working days. Where appropriate, a response indicating the decision of the Office or agency regarding the request to amend should be furnished at that time. Where a decision cannot be furnished within ten working days, the response shall acknowledge receipt of the request and shall inform the requester of the reasons for the delay and the approximate date (within 20 working days) on which a decision will be issued.

(c) When the request for amendment is granted, the system manager or designee shall make the requested amendment, informing the individual in writing of this action, and provide either a copy of the amended record, or in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in computer media), a statement of how the amendment was effected. Further, the system manager must notify prior recipients of the record (recipients to whom information was disclosed for which an accounting of disclosure was made) of the amendment. Such notification shall inform the prior recipient of the amendment(s) made and that they are to apprise any other agency or person, to which they have disclosed the record, of the amendment(s) to the record. Also, the system manager or designee should, where practical, and where records are used in determinations concerning individuals, advise all other known holders of the record of the amendment. The requester shall be informed that prior recipients of the record have been requested to amend their copies of the record.

(d) When the request for amendment is denied, the system manager or designee shall inform the individual in writing that the request is denied and provide the following information:

(1) The system manager's or designee's name and position title;

(2) The reason for denial, including citation of the appropriate sections of the Act and § 297.307(c) of this subpart; and

(3) The procedures for requesting a review of the denial, including the name and address of the Assistant Director for Agency Compliance and Evaluation, or in the case of an OPM denial, the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, as appropriate (see § 297.210).

(e) In those circumstances where the request is partially granted and partially denied, inform the requester how the amendment has been partially effected (paragraph (c) of this section) and the basis for the denial of part of the request (paragraph (d) of this section).

§ 297.307 Basis for denials of request for amendments.

(a) The following criteria will be considered by the system manager or designee in reviewing initial requests for amendment of records:

(1) The sufficiency of the evidence submitted by the data subject;

(2) The factual accuracy of the information submitted and the information in the record;

(3) The relevancy, necessity, timeliness, and completeness of the information in light of the purpose for which it was collected;

(4) The degree of possibility that denial of the request could result in unfair determinations adverse to the data subject;

(5) The character of record sought to be amended;

(6) The propriety and feasibility of complying with specific means of amendment requested by the data subject; and

(7) The possible involvement of the record in a judicial or quasi-judicial process.

(b) An individual requesting an amendment of a record has the burden of supplying information in support of the propriety and necessity of the amendment request. The decision on the request would then be rendered based on a review of the data submitted. The Office or agency official is not required to gather supporting evidence for the individual and reserves the right to verify the evidence which the individual submits.

(c) Amendment of a record will be denied upon a determination by the system manager or designee that:

(1) the record is subject to an exemption from the provisions of the Privacy Act allowing amendment of records, and such exemption is claimed under § 297.304 of this part;

(2) The information submitted by the data subject is not accurate, relevant, or of sufficient probative value;

(3) The amendment would violate an enacted statute or regulation;

(4) The individual refuses to provide information which is necessary to

process the request to amend the record; or

(5) The record for which amendment is requested is a record presented in a judicial or quasi-judicial proceeding, or maintained in anticipation of being used in a judicial or quasi-judicial proceeding, when such record is or will become available to the individual under that proceeding and may be contested during the course of that proceeding.

§ 297.308 Response to request for administrative review of denial of request for amendment.

(a) The Office shall respond in writing within ten working days to each request for administrative review of a denial of amendment. If a decision cannot be made within the ten day period, an acknowledgement letter will be sent within that time explaining the delay and furnishing an expected date for the decision. A decision on the request must be made within thirty working days after receipt of the request. Only for good cause shown, and at the discretion of the responsible OPM official, can this time limit be extended. Any extension requires written notification to the requester explaining the reason for the extension and furnishing a new expected date for the decision. Generally, such extension shall be for no more than an additional thirty working days.

(b) The requester shall be notified in writing of the Office's decision, and the responsible official shall:

(1) Grant the requested amendment in its entirety and notify the requester of all action taken to effect the amendment and to notify prior recipients of the record (see § 297.308(c) for actions required); or

(2) Uphold the decision not to amend the record as requested and inform the requester of:

(i) The basis for the decision;

(ii) The name and position title of the official responsible for the decision;

(iii) The requester's right to file a concise statement of disagreement with the decision and the record contents as well;

(iv) The Office's or the agency's right, where appropriate, to attach the decision notice to the concise statement of disagreement; and

(v) The procedures whereby the requester may seek judicial review of the decision; or

(3) Grant the requested amendment in part, and for that part granted, inform the requester as prescribed in paragraph (b)(1) of this section. For that part denied, inform the requester as prescribed in paragraph (b)(2) of this section.

(c) The system manager or designee who issued the initial denial decision is responsible for providing the record which was the subject of the amendment request, and must otherwise cooperate with the reviewing official.

Subpart D—Requirements for Recordkeeping Under the Privacy Act

§ 297.401 Responsibility for systems of records.

(a) The Office is responsible for the types of systems of records as shown in § 297.101 of this part.

(b) The Office shall be responsible for publishing the annual FEDERAL REGISTER notice of systems of records that will prescribe procedures for processing Privacy Act requests, and for issuing regulations for these systems. The Office also shall be responsible for all recordkeeping requirements prescribed in this subpart except for initial requests for access and amendment and for preparation and submission of the annual report for the Government-wide systems of records that agencies maintain.

(c) Agencies shall be responsible for processing initial requests for access and amendment for those Government-wide system of records identified as OPM/GOVT in the annual publication of system notices. When an agency denies access to or amendment of records in one of these Government-wide systems of records, the Office is solely responsible for any administrative review of that decision.

(d) Agencies shall include in their annual reports, in addition to that information required by the Office of Management and Budget dealing with their own systems of records, the information descriptive of its activities under the Privacy Act on the portions of the Government-wide systems of personnel records they maintain.

§ 297.402 Responsibility for litigation concerning the regulations.

In any litigation action arising out of the Privacy Act, where it is alleged that an agency is in violation of the Act because of its adherence to the regulations prescribed in this part, the Office and not the agency shall respond for the Government.

§ 297.403 Publication of annual notices.

(a) The Office will publish annually in the FEDERAL REGISTER, in the format prescribed by the General Services Administration, a notice describing the systems of records for which it is responsible. These include both the Government-wide systems and the OPM INTERNAL or CENTRAL systems listed in FPM Chapter 297. The notice will contain:

(1) The name and location(s) of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system, including the categories of users and purposes of such uses;

(5) The policies and practices regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The position title and business address of the OPM official(s) responsible for the system of records;

(7) The procedures an individual must follow to be notified if a system of personnel records contains a record about the individual;

(8) The procedures an individual must follow to gain access to a record about the individual in a system of records, and the procedures for amending its content;

(9) The categories of sources of records in the system; and

(10) Any exemptions from Privacy Act requirements which are claimed for the system.

(b) In publishing annual notices in the FEDERAL REGISTER for systems of personnel records for which they are responsible, agencies shall not publish system notices for any records which are included in the Office's Government-wide systems of personnel records. Agencies may publish notices referencing the OPM Government-wide notices, which indicate the geographical locations for these records and the agency official(s) designated to handle requests for access or amendment.

§ 297.404 Reports on changes to systems of records.

(a) The Office shall provide to Congress and the Office of Management and Budget, advance notice of any proposal to establish or alter any OPM system of personnel records. This report will be submitted in accordance with guidelines provided by the Office of Management and Budget.

(b) Agencies shall propose any changes to the Office's Government-wide systems or systems notices to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

§ 297.405 Penalties.

(a) The Privacy Act provides that, if an officer or employee of the Office or any agency willfully maintains a system of personnel records without meeting the notice requirements of this part, that individual may be guilty of a misdemeanor and fined not more than $5,000.

(b) Whenever an agency or an OPM official fails to adhere to the requirements of this part, and that failure adversely affects an individual, the individual may bring a civil action against the agency or the Office in the district court of the United States either in which the complainant resides, has his or her principal place of business, where the agency records are situated, or in the District of Columbia.

§ 297.406 Changing or adding routine uses.

(a) Whenever a new routine use, or substantive change in an existing routine use, is proposed for one of the systems of personnel records for which the Office has published the system notice, OPM will publish in the FEDERAL REGISTER, in accordance with 5 U.S.C. 552a(e)(11), a notice of intention to establish a new or revised routine use. The notice will invite public comment thereon and shall contain the following information:

(1) The name of the system of personnel records for which the new or revised routine use is to be established;

(2) The authority for maintaining the system of personnel records;

(3) The categories of records maintained in the system;

(4) The proposed new or revised routine use or uses;

(5) The purpose of the new or revised routine use or uses; and

(6) The categories of recipients for each use.

This notice may be published at any time, but not less than 30 days prior to the next annual publication of notices.

(b) Agency requests for additional routine uses for one of the Government-wide systems of personnel records must be sent to:

Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(c) In publishing new or revised routine uses in the FEDERAL REGISTER, for systems of personnel records for which they are responsible, agencies may not unilaterally establish any routine uses for records in OPM's Government-wide systems of personnel records in addition to those published in the OPM notices for these systems. The Civil Service Reform Act, Pub. L. 95-454, requires OPM to review agencies' personnel policies and practices to ensure a civil service free from prohibited personnel practices and operating on legally mandated merit system principles. To facilitate these reviews of agency practices, agencies shall list OPM officials as routine users for appropriate agency internal personnel record systems.

§ 297.407 Providing Privacy Act statements.

Agencies shall ensure that individuals from whom information is collected about themselves, when the information is to be maintained in an OPM Government-wide system of records are informed of the authority and reasons for requesting the information, how it may be used, and what the consequences are, if any, of not providing the information. As a minimum, the individual should be given the following information in language which is explicit and easily understood and not so lengthy as to deter an individual from reading it:

(a) Cite the specific statute or Executive Order, including a brief title or subject, which authorizes the agency to collect the personal information it is requesting. Inform the individual whether or not a response is mandatory or voluntary and any possible consequences of failing to respond;

(b) Cite the principal purpose(s) for which the information will be used by the agency which maintains it; and

(c) Cite the probable routine uses for which the information may be employed. This may be a summary of the information published in the system notices.

§ 297.408 Annual reports.

(a) By April 30th of each year, the Office will submit to the Office of Management and Budget, a report concerning activities under the Privacy Act of 1974 as they relate to OPM systems of personnel records for the preceding year.

(b) To the extent that agencies have physical custody of records in the Office's Government-wide systems of personnel records, and have the authority in some instances to grant access to and amend these records, agencies will include in their annual report to OMB, their Privacy Act activities involving these records as outlined in § 297.401(d) of this subpart.

§ 297.409 Annual notice to employees.

Agencies must provide, at the individual's request, an opportunity for an individual to review automated and manual personnel records that are maintained in a system of records and concern the individual. Agencies, at least annually, must announce this opportunity to request access to such records by a notice that reaches all employees.

Subpart E—Disclosures From Systems of Records

§ 297.501 Restrictions on disclosure of a deceased data subject's record.

Whenever a specific request is made for access to the record of a deceased data subject, the information requested will be disclosed unless it pertains to someone other than the data subject and disclosure would be considered to be a clearly unwarranted invasion of the living person's privacy or can otherwise be legally withheld.

§ 297.502 General written consent requirement.

The Office or agency is prohibited from disclosing a record, from a system of records without obtaining the prior written consent of the data subject, except as provided below.

§ 297.503 Disclosures permitted without prior written consent of the data subject.

Section 297.213 of this part described conditions under which disclosures of records could be made to parties other than the data subject. Among those conditions, § 297.213(e) refers to the (b)(1) through (b)(11) provisions of the Privacy Act (5 U.S.C. 552a). These provisions are shown below and allow disclosure of records without the prior written consent of the data subject. The Office and agencies are permitted to disclose information from a system of records without the prior consent of the data subject, whenever such disclosure is:

(a) To those officers and employees of the agency which maintain the record and who have a need for the record in the performance of their duties (includes disclosure of records to OPM officials from any Government-wide system maintained by agencies for the Office, e.g., disclosure of Official Personnel Folders);

(b) Required under the Freedom of Information Act (5 U.S.C. 552);

(c) Permitted by a routine use that has been published in the FEDERAL REGISTER;

(d) To the Bureau of the Census for purposes of planning or carrying out a Census or survey or related activity pursuant to the provisions of title 13;

(e) To a recipient who has provided the Office or an agency with advance adequate written assurance that the record will be used soley as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

Assurance includes:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health and safety of an individual (not necessarily the data subject). Upon such disclosure, the data subject must be notified in writing of the disclosure. This requirement is met when notification is transmitted to the last known address of the data subject;

(i) To either House of Congress, or to a committee or subcommittee (joint or of either House) to the extent that the subject matter falls within the jurisdiction of the committee or subcommittee;

(j) To the Comptroller General, or any authorized representative of that office in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction, as defined in § 297.504 of this part.

§ 297.504 Disclosure pursuant to compulsory legal process.

(a) The Office or agency may disclose, without prior consent of the data subject, specified information from a system of records whenever such disclosure is pursuant to an order issued by a court of competent jurisdiction, Grand Jury, or quasi-judicial agency. For purposes of this subpart, a court of competent jurisdiction includes the judicial system of a state, territory, or possession of the United States.

(b) Notice of the order shall be provided as soon as practicable after service of the order and shall be mailed to the last known address of the individual and state the name and number of the case or proceeding, and the nature of the information sought.

(c) Before complying or refusing to comply with the order, an official with authority to disclose records under this subpart will consult legal counsel to ensure that the response is appropriate.

§ 297.505 Disclosure pursuant to a subpoena.

(a) The Office or agency may disclose, without prior consent of the individual, specified information from a system of records whenever such disclosure is pursuant to subpoena issued in connection with a judicial or administrative proceeding.

(b) Before responding to a subpoena, an official with authority to disclose records under this part, will consult, as appropriate, with legal counsel to ensure that:

(1) The requested materials are not privileged and are relevant to the subject matter of the related judicial or administrative proceeding.

(2) Motion is made to quash or modify a subpoena that is unreasonable or oppressive;

(3) Motion is made for a protective order where necessary to restrict the use or disclosure of any information furnished for purposes other than those of the judicial or administrative proceeding; or

(4) Request for an extension, if needed, of the time allowed for response is made.

(c) If a subpoena for production of documents requests appearance of an agency employee, the response shall be to furnish certified copies of the appropriate records to the requesting party. In no event will original documents be released from the physical control of a responsible office or agency employee.

(d) If oral testimony is sought by the subpoena, an explanation by the party seeking the testimony which sets forth the testimony desired, must be furnished. The employee or former employee of the office who has been subpoenaed to provide material or information shall consult with legal counsel to determine the matters about which the employee may properly testify.

(e) In all situations concerning a subpoena or other demand for an employee of the Office or agency to produce any material or testimony relating to information contained in the files of the Office or agency acquired as part of the employee's performance of his or her official duties, the employee shall not disclose the information without prior approval of the appropriate Office or agency official.

(f) If it is decided that the information or material should not be provided, the employee or former employee subpoenaed shall respectfully decline to comply with the demand on the basis of instructions from the appropriate Office or agency official.

(g) When subpoenaed records concerning a party or a non-party are subject to the Privacy Act, the disclosing official of the Office or agency shall be responsible for notifying the individual of the subpoena's issuance. Notice shall be mailed to the last known address of the individual and state the date the subpoena is returnable, the name and number of the case or proceeding, and the nature of the information sought. Notice shall be provided as soon as practicable after service of the subpoena.

§ 297.506 Accounting of disclosure.

(a) Whenever an accounting of disclosure is required, as stated in

§ 297.214 of this part, the accounting shall include:

(1) The description of the record disclosed;

(2) The name, position title, and address of the person to whom the disclosure was made;

(3) The method and purpose of disclosure;

(4) The name and position title of the person making the disclosure; and

(5) The date of the disclosure of the record.

(b) The Office or agency must record the accounting of disclosures and must retain this accounting for at least five years or the life of the record, whichever is longer. This accounting of disclosures may be maintained either in the record itself or elsewhere, and must be in a manner that permits an accurate and complete response to any proper request for an accounting of all disclosures made.

(c) Except for disclosures made under 5 U.S.C. 552a(b)(7) for law enforcement purposes, or disclosures from Office systems of personnel records for which an exemption from 5 U.S.C. 552a(c)(3) has been claimed, the accounting of disclosures is available to the data subject on request.

(d) For purposes of this subpart, the system of accounting of disclosures is not a system of records as defined in this part and no accounting need be maintained for disclosures of the accounting of disclosures.

§ 297.507 Penalties.

(a) Whenever the Office or agency fails to comply with any provision of this subpart in such a way as to have an adverse effect on a data subject, that data subject may bring civil action against the Office or agency.

(b) Whenever an Office or agency employee knowingly and willfully makes a disclosure to any person or agency not entitled to receive it, that individual may be guilty of a misdemeanor and fined not more than $5,000.

(c) Whenever a requester, or an Office or agency employee knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses, that individual may be guilty of a misdemeanor and fined not more than $5,000.

PART 300—EMPLOYMENT (GENERAL)

Subpart A—Employment Practices

Sec.
300.101 Purpose.
300.102 Policy.
300.103 Basic requirements.
300.104 Appeals, grievances and complaints.

Subpart B—Examinations and Related Subjects

300.201 Examinations.

Subpart C—OPM Approval in Filling Positions in GS-16 and Above

300.301 OPM approval in filling positions in GS-16 and above.

Subparts D-E—[Reserved]

Subpart F—Time-in-Grade Restrictions

300.601 Applicability.
300.602 Restrictions.
300.603 Exceptions to restrictions.
300.604 Periods of creditable service.
300.605 Other time restrictions.

AUTHORITY: 5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted. Secs. 300.101-300.104 also issued under 5 U.S.C. secs. 7151, 7154; E.O. 11478, 3 CFR, 1966-1970 Comp., p. 803, unless otherwise noted.

Subpart A—Employment Practices

§ 300.101 Purpose.

The purpose of this subpart is to establish principles to govern, as nearly as is administratively feasible and practical, the employment practices of the Federal Government generally, and of individual agencies, that affect the recruitment, measurement, ranking, and selection of individuals for initial appointment and competitive promotion in the competitive service or in positions in the government of the District of Columbia required to be filled in the same manner that positions in the competitive service are filled. For the purpose of this subpart, the term "employment practices" includes the development and use of examinations, qualification standards, tests, and other measurement instruments.

[36 FR 15447, Aug. 14, 1971]

§ 300.102 Policy.

This subpart is directed to implementation of the policy that competitive employment practices:

(a) Be practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of candidates for the jobs to be filled;

(b) Result in selection from among the best qualified candidates;

(c) Be developed and used without discrimination because of race, color, religion, sex, age, national origin, partisan political affiliation or other nonmerit grounds; and

(d) Insure to the candidate opportunity for appeal or administrative review, as appropriate.

[40 FR 15379, Apr. 7, 1975]

§ 300.103 Basic requirements.

(a) *Job analysis.* Each employment practice of the Federal Government generally, and of individual agencies, shall be based on a job analysis to identify:

(1) The basic duties and responsibilities;

(2) The knowledges, skills, and abilities required to perform the duties and responsibilities; and

(3) The factors that are important in evaluating candidates. The job analysis may cover a single position or group of positions, or an occupation or group of occupations, having common characteristics.

(b) *Relevance.* (1) There shall be a rational relationship between performance in the position to be filled (or in the target position in the case of an entry position) and the employment practice used. The demonstration of rational relationship shall include a showing that the employment practice was professionally developed. A minimum educational requirement may not be established except as authorized under section 3308 of title 5, United States Code.

(2) In the case of an entry position the required relevance may be based upon the target position when—

(i) The entry position is a training position or the first of a progressive series of established training and development positions leading to a target position at a higher level; and

(ii) New employees, within a reasonable period of time and in the great majority of cases, can expect to progress to a target position at a higher level.

(c) *Equal employment opportunity.* An employment practice shall not discriminate on the basis of race, color, religion, sex, age, national origin, partisan political affiliation, or other nonmerit factor. Employee selection procedures shall meet the standards established by the "Uniform Guidelines on Employee Selection Procedures" (1978), 43 FR 38290 (August 25, 1978).

[40 FR 15380, Apr. 7, 1975, as amended at 43 FR 38310, Aug. 25, 1978]

§ 300.104 Appeals, grievances and complaints.

(a) *Employment practices.* A candidate who believes that an employment practice which was applied to him or her by the Office of Personnel Management violates a basic requirement in § 300.103 is entitled to appeal to the Merit Systems Protection Board under the provisions of its regulations.

(b) *Examination ratings.* A candidate may file an appeal with the Office from his examination rating or the rejection of his application, except that, where the Office has delegated examining authority to an agency, the candidate should appeal directly to that agency. The appeal shall be filed and processed in accordance with instructions in Chapter 337 of the Federal Personnel Manual.

(c) *Complaints and grievances to an agency.* (1) A candidate may file a complaint with an agency when he believes that an employment practice which was applied to him and which is administered or required by the agency discriminates against him on the basis of race, color, religion, sex, or national origin; or age, provided that at the time of the alleged discriminatory action the candidate was at least 40 years of age but less than 65 years of age. The complaint shall be filed and processed in accordance with Subparts B and E of Part 713 of this chapter.

(2) Except as provided in paragraph (c)(1) of this section, an employee may file a grievance with an agency when he or she believes that an employment practice which was applied to him or her and which is administered or required by the agency violates a basic requirement in § 300.103. The grievance shall be filed and processed under the agency grievance system established in accordance with Part 771 of this chapter, or a negotiated grievance system.

(5 U.S.C. 7701, et seq.)

[40 FR 15380, Apr. 7, 1975, as amended at 41 FR 51579, Nov. 23, 1976; 44 FR 48951, Aug. 21, 1979]

Subpart B—Examinations and Related Subjects

§ 300.201 Examinations.

(a) The Office makes available information that will assist members of the public in understanding the purpose of, and preparing for, civil service examinations. This includes the types of questions and the categories of knowledge or skill pertinent to a particular examination. The Office does not release the following: (1) Testing and examination materials used solely to determine individual qualifications, and (2) test material, including test plans, item analysis data, criterion instruments, and other material the disclosure of which would compromise the objectivity of the testing process.

(b) Each employee entrusted with test material has a positive duty to protect the confidentiality of that material and to assure release only as required to conduct an examination authorized by the Office.

(c) An applicant may review his or her own answers in a written test, but only in the presence of an employee of the Office or, for the convenience of the Office and requester, in the presence of an employee of another agency designated by OPM. The applicant may not review a test booklet in connection with this review.

(d) The Office will release information concerning the results of examinations only to the individual concerned, or to parties explicitly designated by the individual.

(e) The Office will not reveal the names of applicants for civil service positions or eligibles on civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502)

[50 FR 3312, Jan. 24, 1985]

Subpart C—OPM Approval in Filling Positions in GS-16 and Above

§ 300.301 OPM approval in filling positions in GS-16 and above.

An agency, unless excepted from this requirement by law, may fill a competitive or excepted position classified in GS-16, GS-17, or GS-18, only by a person whose qualifications for the position have been approved by OPM.

(5 U.S.C. 3324)

[33 FR 12412, Sept. 4, 1968]

Subparts D-E—[Reserved]

Subpart F—Time-In-Grade Restrictions

§ 300.601 Applicability.

(a) This subpart applies to any advancement from a competitive or excepted position that is subject to the General Schedule to a competitive position that is subject to the General Schedule by:

(1) Promotion;

(2) Transfer to a higher grade; or

(3) Any type of appointment under this chapter (including reemployment and reinstatement) made within 1 year after separation from a nontemporary appointment.

(b) This subpart does not apply:

(1) When the position from which the advancement is made is outside the competitive service and in the legislative or judicial branch; or

(2) When the position from which the advancement is made is not subject to the General Schedule unless the employee advanced held a position of this type within the preceding year.

[37 FR 11965, June 16, 1972]

§ 300.602 Restrictions.

The time-in-grade restrictions in this subpart are subject to the eligibility requirements based on performance in § 335.104 of this chapter.

(a) *Advancement to positions at GS-12 and above.* An agency may advance an employee to a position at GS-12 or above only after he or she has served a minimum of 1 year in the next lower grade.

(b) *Advancement to positions at GS-6 through GS-11.* An agency may advance an employee to a position at GS-6 through GS-11 only after he or she has served a minimum of:

(1) One year in a position two grades lower, when the position to which he or she is advanced is in a line of work properly classified at two-grade intervals; or

(2) One year at the next lower grade when the position to which he or she is advanced is in a line of work properly classified at one-grade intervals.

(c) *Advancement to positions at GS-5 or below.* An agency may advance an employee to a position at GS-5 or below which is not more than two grades above the lowest grade he or she held within the preceding year under a nontemporary appointment.

[48 FR 49478, Oct. 25, 1983]

§ 300.603 Exceptions to restrictions.

(a) Section 300.602 does not prevent the advancement of an employee when:

(1) The advancement is in accordance with a training agreement which has been approved by the Office or established under agreement with the Office; however, an agency may not make promotions of more than 2 grades in 1 year solely on the basis of a training agreement or series of training agreements;

(2) The advancement is to any grade or level up to that from which the employee has ever been demoted or separated by any agency because of a reduction in force;

(3) The employee is within reach on a register for competitive appointment to the position to be filled; or

(4) The head of the agency or his or her designee, with the prior approval of the Office or under agreement negotiated with the Office, authorizes the advancement to avoid undue hardship or inequity, in an individual case of meritorious nature.

(b) Section 300.602 (a) and (b) does not prevent the advancement of an employee who has 1 year of service in a position two grades lower than the position to be filled if there is no position in the normal line of promotion that is one grade lower than the position to be filled.

(c) Section 300.602(c) does not prevent the advancement of an employee to a position at GS-5 or below which he or she held previously or to which he or she could have been advanced previously under that paragraph.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 55132, Sept. 25, 1979]

§ 300.604 Periods of creditable service.

(a) Except as provided in § 330.502 of this chapter, the periods of service required by §§ 300.602 (a) and (b) and 300.603(b) include all service at the appropriate or higher grade or level in positions in the Federal or District of Columbia civilian service regardless of whether or not the positions were subject to the General Schedule.

(b) Except as provided in § 330.502 of this chapter, when two periods of service in positions subject to the General Schedule are interrupted for less than 1 year by service in a position not subject to the General Schedule, the latter service is counted as a continuation of the prior service in the position subject to the General Schedule.

(c) Except as provided in paragraph (b) of this section, and in § 330.502 of this chapter, service in a position not subject to the General Schedule is counted at the equivalent General Schedule grade in effect when the service was performed. The equivalent General Schedule grade is determined by comparing the representative rate of the position, as defined in Part 351 of this chapter, with the representative rates of positions under the General Schedule. The highest General Schedule grade whose representative rate does not exceed the representative rate of the position by more than one within-grade increase is the equivalent General Schedule grade.

[34 FR 2649, Feb. 27, 1969]

§ 300.605 Other time restrictions.

The time-in-grade restrictions in this subpart are in addition to the time-after-competitive-appointment restrictions contained in Subpart E of Part 330 of this chapter.

[34 FR 2649, Feb. 27, 1969]

PART 301—OVERSEAS EMPLOYMENT

Subpart A—[Reserved]

Subpart B—Overseas Limited Appointment

Sec.
301.201 Appointment of United States citizens recruited overseas.
301.202 Appointment of citizens recruited outside overseas areas.
301.203 Duration of appointment.
301.204 Status and trial period.
301.205 Requirements and restrictions.
301.206 Within-grade increases.

Subpart C—Overseas Employees Eligible for Noncompetitive Appointment Upon Return to the United States

301.301 Eligibility under the authority of Executive Order 12362.
301.302 Overseas appointing procedures.
301.303 Performance appraisal.

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR, 1954-1958 Comp., p. 274.

SOURCE: 44 FR 54691, Sept. 21, 1979, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Overseas Limited Appointment

§ 301.201 Appointment of United States citizens recruited overseas.

An agency may give an overseas limited appointment without competitive examination to a United States citizen recruited overseas, unless there is an adequate and appropriate register resulting from an examination held in the locality where the vacancy exists.

§ 301.202 Appointment of citizens recruited outside overseas areas.

When an agency determines that unusual or emergency conditions make it infeasible to appoint from a register, it may give an overseas limited appointment to a United States citizen recruited in an area where an overseas limited appointment is not authorized.

§ 301.203 Duration of appointment.

(a) An appointment under this subpart is of indefinite duration unless otherwise limited.

(b) An agency may make an overseas limited term appointment for a period not in excess of 5 years when a time limitation is imposed as a part of a general program for rotating career and career-conditional employees between overseas areas and the United States after specified periods of overseas service.

(c) Under conditions published by the Office of Personnel Management in the Federal Personnel Manual, an agency may make an overseas limited appointment for 1 year or less to meet administrative needs for temporary employment. An agency may extend an appointment made for a period of 1 year or less under this paragraph under conditions published by the Office of Personnel Management in the Federal Personnel Manual.

§ 301.204 Status and trial period.

(a) An overseas limited employee does not acquire a competitive status on the basis of his or her overseas limited appointment. He or she is required to serve a trial period of 1 year when given an overseas limited appointment of indefinite duration or an overseas limited term appointment.

(b) The agency may terminate an overseas limited employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

§ 301.205 Requirements and restrictions.

The requirements and restrictions in Subpart F of Part 300 and Part 333 of this chapter apply to appointments under this subpart.

§ 301.206 Within-grade increases.

An employee serving under an overseas limited appointment of indefinite duration or an overseas limited term appointment in a position subject to the General Schedule, is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

(5 U.S.C. 3301, 3302, E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR, 1954-1958 Comp., p. 274)

Subpart C—Overseas Employees Eligible for Noncompetitive Appointment Upon Return to the United States

AUTHORITY: E.O. 12362, 47 FR 21231, 3 CFR, 1982 Comp., p. 182.

SOURCE: 48 FR 52868, Nov. 23, 1983; correctly designated at 49 FR 5601, Feb. 14, 1984, unless otherwise noted.

§ 301.301 Eligibility under the authority of Executive Order 12362.

Employees who serve under overseas local hire appointments as defined in § 315.608(b) of this chapter and meet the eligibility criteria of § 315.608(a) of this chapter are eligible for noncompetitive career-conditional, term, or temporary limited appointment when they return to the United States.

§ 301.302 Overseas appointing procedures.

Overseas agencies are required to insure that selection of employees for local hire appointments in the overseas area is made on the basis of the ability, knowledge, and skills of eligible candidates, in accordance with applicable law and regulation.

§ 301.303 Performance appraisal.

As soon as practicable, but beginning not later than January 1, 1984, overseas agencies are required to evaluate the performance of employees who serve under overseas local hire appointments as defined in § 315.608(b) of this chapter and who are eligible to meet the criteria established in § 315.608(a), of this chapter in accordance with the agency's performance appraisal plan established under Chapter 43 of title 5, U.S. Code, unless the agency is exempt from the provisions of that chapter.

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

NOMENCLATURE CHANGE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subpart A—General Provisions

Sec.
302.101 Positions covered by regulations.
302.102 Method of filling positions and status of incumbent.
302.103 Definition.
302.104 Applicability of regulations to applicants and employees.
302.105 Special agency plans.

Subpart B—Eligibility Standards

302.201 Persons entitled to veteran preference.
302.202 Qualification requirements.
302.203 Disqualifying factors.

Subpart C—Accepting, Rating, and Arranging Applications

302.301 Receipt of applications.
302.302 Examination of applicants.
302.303 Maintenance of employment lists.
302.304 Arrangement of ratings.

Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

302.401 Selection and appointment.
302.402 Reappointment.
302.403 Qualifications for promotion.

Subpart E—Appeals

302.501 Entitlement.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 8151; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218, unless otherwise noted

SOURCE: 33 FR 12413, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 302.101 Positions covered by regulations.

(a) *Positions covered.* With respect to the application of veteran preference, this part applies to each position in the executive branch of the Federal Government and in the District of Columbia which is not in the competitive service as defined in § 212.101(a) of this chapter. With respect to restoration rights due to compensable injury and appeals therefrom, it applies to those positions covered by 5 U.S.C. 8101(1) which are not in the competitive service.

(b) *Positions not covered.* This part does not apply to a position or appointment which by the Congress is required to be confirmed by, or made with, the advice and consent of the Senate, or to a position of policeman or fireman in the government of the District of Columbia.

(c) *Positions exempt from appointment procedures.* In view of the circumstances and conditions surrounding employment in the following classes of positions, an agency is not required to apply the appointment procedures of this part to them, but each agency shall follow the principle of veteran preference as far as administratively feasible and, on the request of a qualified and available preference eligible, shall furnish him/her with the reasons for his/her nonselection. Also, the exemption from the appointment provisions of this part does not relieve agencies of their obligation to accord persons entitled to priority consideration (see § 302.103) their rights under 5 U.S.C. 8151:

(1) Positions filled by persons appointed without pay or at a pay of $1 a year;

(2) Positions outside the continental United States and outside the State of Hawaii and the Commonwealth of Puerto Rico when filled by persons resident in the locality, and positions in the State of Hawaii and the Commonwealth of Puerto Rico when paid in accordance with the prevailing wage rates;

(3) Positions which the exigencies of the national defense program demand be filled immediately before lists of qualified applicants can be established or used, but appointments to these positions shall be temporary appointments not to exceed 1 year which may be renewed for 1 additional year at the discretion of the agency;

(4) Positions filled by appointees serving on an irregular or occasional basis whose hours or days of work are not based on a prearranged schedule and who are paid only for the time when actually employed or for services actually performed;

(5) Positions paid on a fee basis;

(6) Positions included in Schedule A (see Subpart C of Part 213 of this chapter) and similar types of positions when OPM agrees with the agency that the positions should be included hereunder;

(7) Positions included in Schedule C (see Subpart C of Part 213 of this chapter);

(8) Student Trainee positions when filled under Schedule B (see Subpart C of Part 213 of this chapter);

(9) Positions filled by noncareer executive assignment (see Subpart F of Part 305 of this chapter); and

(10) Attorney positions.

[33 FR 12413, Sept. 4, 1968, as amended at 43 FR 2378, Jan. 17, 1978; 44 FR 66573, Nov. 20, 1979]

§ 302.102 Method of filling positions and status of incumbent.

(a) To the extent permitted by statute and this chapter, each appointment, position change, and removal in the excepted service shall be made in accordance with any regulations or practices that the head of the agency concerned finds necessary.

(b) Except as authorized under paragraph (c) of this section, a person appointed to an excepted position does not acquire a competitive status by reason of the appointment.

(c) Upon a finding by OPM that in a particular situation the action will be in the interest of good administration, OPM may authorize an agency to make appointments to specified positions in the excepted service in the same manner as to positions in the competitive service. Persons given career-conditional or career appointments pursuant to a specific authorization by OPM under this paragraph may acquire a competitive status as provided in Part 315 of this chapter.

§ 302.103 Definition.

"Person entitled to priority consideration" means a person who was furloughed or separated without misconduct, from a position without time limit, because of a compensable injury and whose recovery takes longer than 1 year from the date compensation began. To be eligible under this part the person must apply for reappointment to his or her former agency within 30 days of the date of cessation of compensation.

[43 FR 2378, Jan. 17, 1978]

§ 302.104 Applicability of regulations to applicants and employees.

Each agency shall follow the provisions of this part relating to examination, rating, and selection for appointment of an applicant when a qualified preference eligible or person entitled to priority consideration applies for appointment to a position covered by this part. Each agency, in its discretion, may follow these provisions in making an appointment when no preference eligible or person entitled to priority consideration applies.

[40 FR 23835, June 3, 1975]

§ 302.105 Special agency plans.

An agency having a position subject to this part may establish a system for making appointments which will result in granting to eligible persons the preference or priority consideration referred to in sections 1302(c) or 8151 of title 5, United States Code, but which does not conform to all the procedural requirements set forth in this part. However, an agency may not put such a system into effect unless it has entered into an agreement with the Office permitting establishment of such systems, or has obtained prior Office approval for the particular system to be used.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 55132, Sept. 25, 1979]

Subpart B—Eligibility Standards

§ 302.201 Persons entitled to veteran preference.

In actions subject to this part, each agency shall grant 5-point preference to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10-point preference to preference eligibles under section 2108(3) (C)-(G) of that title.

§ 302.202 Qualification requirements.

Before making an appointment to a position covered by this part, each agency shall establish qualification standards such as those relating to experience and training, citizenship, minimum age, physical condition, etc., which shall relate to the duties to be performed. An agency may delegate the establishment of standards relating to a group of positions or a specific position to the appropriate administrative level or subdivision of the agency and that level or subdivision may amend or modify the standards in accordance with the needs of the locality in which the position is located, but the agency shall determine that each standard established is in conformity with this part. Each agency shall make its standards a matter of record in the appropriate office of the agency, and shall furnish information concerning the standards for a position to an applicant on his request. Each agency shall apply the standards for a position uniformly to all applicants, except for such waivers as are provided in this part for a preference eligible. An agency shall not include a minimum educational requirement in qualification standards, except for a scientific, technical, or professional position the duties of which the agency decides cannot be performed by a person who does not have a prescribed minimum education. An agency shall not establish a maximum age requirement for any position. Each agency shall make a part of its records the reasons for its decision under this section, and shall furnish those reasons to an applicant on his request. The qualification standards shall include:

(a) A provision for waiver by the agency of requirements as to age, height, and weight for each preference eligible when the requirements are not essential to the performance of the duties of the position; and

(b) A provision for waiver by the agency of physical requirements for each preference eligible when the agency, after giving due consideration to the recommendation of an accredited physician, finds that the applicant is physically able to discharge the duties of the position.

[40 FR 15380, Apr. 7, 1975]

§ 302.203 Disqualifying factors.

The qualification standards established by an agency or by an administrative level or subdivision of an agency may provide that certain reasons disqualify an applicant for appointment. The following, among others, may be included as disqualifying reasons:

(a) Dismissal from employment for delinquency or misconduct;

(b) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct;

(c) Intentional false statement or deception or fraud in examination or appointment;

(d) Habitual use of intoxicating beverages to excess;

(e) Reasonable doubt as to the loyalty of the person involved to the Government of the United States;

(f) Any legal or other disqualification which makes the individual unfit for the service; or

(g) Lack of United States citizenship.

An agency may not disqualify an applicant solely because of his retired status.

Subpart C—Accepting, Rating, and Arranging Applications

§ 302.301 Receipt of applications.

(a) Each agency shall establish definite rules regarding the acceptance of applications for employment in positions covered by this part and shall make these rules a matter of record.

(b) Each agency shall apply its rules uniformly to all applicants who meet the conditions of the rules and shall furnish information concerning the rules to an applicant on his request.

§ 302.302 Examination of applicants.

(a) *Rating.* An agency may provide for an evaluation of the qualifications of applicants for a position who are available under §§ 302.202, 302.203, and 302.301 at any time before appointment is made to the position. Numerical ratings shall be assigned on a scale of 100 and each applicant rated 70 or more is eligible for appointment. Numerical ratings are not required when all qualified applicants will be offered immediate appointment. When there is an excessive number of applicants (1) numerical ratings are required only for a sufficient number of the highest qualified applicants to meet the anticipated needs of the agency within a reasonable period of time, and (2) the agency shall adopt procedures to insure the consideration of all preference eligibles in the order in which they would have been considered if all applicants had been assigned numerical ratings. Each agency shall add to the earned numerical ratings of applicants who make a passing grade:

(i) Five points for applicants who are preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code; and

(ii) Ten points for applicants who are preference eligibles under section 2108(3) (C)-(G) of that title.

An agency shall furnish a notice of the rating assigned to an applicant on his request.

(b) *Nonpreference applicants for certain positions.* An agency may not consider or rate an application for the position of elevator operator, messenger, guard, or custodian submitted by a nonpreference eligible as long as at least three qualified preference eligibles are available for the position.

(c) *Evaluating experience.* When experience is a factor in determining eligibility, an agency shall credit a preference eligible (1) with time spent in the military service of the United States if the position for which he is applying is similar to the position he held immediately before his entrance into the military service; and (2) with all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

§ 302.303 Maintenance of employment lists.

(a) *Establishment.* An agency shall enter the names of applicants assigned an eligible numerical rating under § 302.302(a) on either (1) the appropriate reemployment list, or (2) the appropriate regular employment list in accordance with their numerical ratings, except that the names of:

(i) Preference eligibles shall be entered in accordance with their augmented ratings and ahead of others having the same rating; and

(ii) Preference eligibles who have a compensable service-connected disability of 10 percent or more shall be entered at the top of the register in the order of their ratings unless the register is for professional or scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities.

(b) *Reemployment list.* The reemployment list shall consist of the names of former employees of the agency who are to be considered for future employment, and shall, in any case, include the following:

(1) The name of each former employee of the agency who (i) is a preference eligible, (ii) has been furloughed or separated without delinquency or misconduct, and (iii) applies for reemployment; and

(2) The name of each former employee of the agency who is a preference eligible and who, as the result of an appeal under Part 752 of this chapter, is found by the Merit Systems Protection Board to have been unjustifiably dismissed from the agency.

(3) The name of each former employee of the agency who has been furloughed or separated due to compensable injury sustained under the provisions of 5 U.S.C. Chapter 81, Subchapter I, and who is eligible for priority consideration under this part.

(c) *Regular employment list.* (1) The regular employment list shall consist of the names of eligible applicants who have been assigned numerical ratings and whose names are not on the agency reemployment list.

(2) A person entitled to priority consideration under this part is eligible for entry on an agency's regular employment list when he:

(i) Has a statement from his last employing agency that he cannot be placed and

(ii) Has ceased receiving compensation under 5 U.S.C. Chapter 81 no more than 1 year previously for a person formerly in tenure group II and 2 years previously for a person formerly in tenure group I. Eligibility may be terminated earlier, however, upon the person's acceptance of a nontemporary, full-time position or upon his declination of full-time employment in a position equivalent to the one he held at the time of injury.

[33 FR 12413, Sept. 4, 1968, as amended at 40 FR 23835, June 3, 1975]

§ 302.304 Arrangement of ratings.

(a) *Order of consideration.* Except as provided in paragraph (d) of this section, an agency shall consider the names of applicants who have been assigned eligible numerical ratings for a given position in either order A or order B set forth in paragraphs (b) and (c) of this section.

(b) *Order A.* (1) The name of each qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency reemployment list, in the order of his numerical rating.

(2) The name of each other qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, in the order of his numerical rating.

(3) The name of each other qualified applicant on the agency reemployment list in the order of his numerical rating.

(4) The name of each other qualified applicant in the order of his numerical rating.

(c) *Order B.* (1) The name of each qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency reemployment list, in the order of his numerical rating.

(2) The name of each other qualified applicant on the agency reemployment list in the order of his numerical rating.

(3) The name of each other qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, in the order of his numerical rating.

(4) The name of each other qualified applicant, in the order of his numerical rating.

(d) *Professional order.* An agency shall consider the names of applicants who have been assigned eligible numerical ratings for professional and scientific positions in GS-9 and above in the following order:

(1) The name of each applicant on the agency reemployment list, in the order of his numerical rating.

(2) The name of each other applicant, in the order of his numerical rating.

Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

§ 302.401 Selection and appointment.

(a) *Selection.* When making an appointment from an employment list, an agency shall select for appointment to each vacancy from not more than the highest three names available for appointment in the order provided in § 302.304, except that an agency is not required to:

(1) Accord an applicant on the agency reemployment list the preference consideration required by § 302.304 if the reemployment list does not contain the names of at least three preference eligibles; or

(2) Consider an applicant who has previously been considered three times or a preference eligible if consideration of his name has been discontinued for the position as provided in paragraph (b) of this section.

(b) *Passing over a preference applicant.* When an agency, in making an appointment as provided in paragraph (a) of this section, passes over the name of a preference eligible who is entitled to prior consideration under § 302.304 and selects a nonpreference eligible, it shall record its reasons for so doing, and shall furnish a copy of those reasons to the preference eligible or his representative on request. An agency may discontinue consideration of the name of a preference eligible for a position if on three occasions the agency has considered him for the position and has passed over his name and recorded its reasons for so doing.

§ 302.402 Reappointment.

An agency may reappoint a former employee of the executive branch of the Federal Government or the government of the District of Columbia who is a preference eligible to a position covered by this part without regard to the names of qualified applicants on the agency reemployment list or regular employment list.

§ 302.403 Qualifications for promotion.

In determining qualifications for promotion with respect to an employee who is a preference eligible, an agency shall waive:

(a) Requirements as to age, height and weight unless the requirement is essential to the performance of the duties of the position; and

(b) Physical requirements if, in the opinion of the agency, after considering the recommendation of an accredited physician the preference eligible is physically able to perform efficiently the duties of the position for which the promotion is proposed.

Subpart E—Appeals

§ 302.501 Entitlement.

An individual who is covered by 5 U.S.C. 8101(1) and is entitled to priority consideration under this part (see § 302.103) may appeal a violation of his/her restoration rights to the Merit Systems Protection Board under the provisions of the Board's regulations by presenting factual information that he or she was denied restoration rights because of the employment of another person.

(5 U.S.C. 7701, et seq.)

[44 FR 48951, Aug. 21, 1979]

PART 305—EXECUTIVE ASSIGNMENT SYSTEM

Subpart A—General Provisions

Sec.
305.101 Applicability of other regulations.
305.102 Coverage.
305.103 Responsibilities for administration.

Subparts B–D—[Reserved]

Subpart E—Career Executive Assignments

305.501 Filling positions covered by the executive assignment system.
305.502 Career executive assignments of Federal employees.
305.503 Career executive assignments from outside the competitive service.
305.504 Tenure and status of persons given career executive assignments.
305.505 Position change.
305.506 Transfer.
305.507 Assignment of persons not serving with career or career-conditional tenure.
305.508 Probationary period.
305.509 Limited executive assignments.
305.510 Change of limited executive assignment to another type of appointment.

Subpart F—Noncareer Executive Assignments

305.601 Positions filled by noncareer executive assignments.
305.602 Review of noncareer executive assignments.
305.603 Status and tenure.
305.604 Removal.

Subpart G—Transitional Provisions

305.701 Change of indefinite or TAPER employment to another type of appointment.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 3324; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11315, 3 CFR, 1966 Comp., p. 165.

SOURCE: 33 FR 12416, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 305.101 Applicability of other regulations.

Except as otherwise provided in this part, Subchapter B of this chapter applies to employment under the executive assignment system.

§ 305.102 Coverage.

(a) *Positions.* The executive assignment system applies to positions in GS-16, 17, and 18 in the executive branch except:

(1) Positions excluded from the coverage of section 3324(a) of title 5, United States Code, by paragraphs (1), (2), and (4) thereof;

(2) Positions in the excepted schedules in Part 213 of this chapter;

(3) Positions excepted from the competitive service by statute; and

(4) Positions of Administrative Law Judge.

(b) *Persons.* The executive assignment system applies to all persons who are assigned to positions under the system.

[33 FR 12416, Sept. 4, 1968, as amended at 41 FR 51579, Nov. 2, 1976]

§ 305.103 Responsibilities for administration.

(a) *OPM responsibilities.* OPM is responsible for effectively implementing and administering the executive assignment system.

(b) *Responsibilities of the agencies.* Periodically, under such conditions as OPM may specify, the head of each agency in which there are positions covered by the executive assignment system shall review with OPM his plans for staffing upper level positions. The head of a newly established agency in which there are such positions shall initially review with OPM his plans for executive staffing as soon as practicable after the establishment of the agency. The head of each agency shall cooperate fully with OPM in establishing needed staffing facilities.

Subparts B–D—[Reserved]

Subpart E—Career Executive Assignments

§ 305.501 Filling positions covered by the executive assignment system.

An agency, in filling a position subject to the executive assignment system, shall make a career executive assignment unless OPM authorizes a limited executive assignment under

§ 305.509, or a noncareer executive assignment under § 305.601.

§ 305.502 Career executive assignments of Federal employees.

(a) Except as provided in paragraph (b) of this section, in making a career executive assignment, the agency shall first consider fully (1) qualified employees under its merit promotional program and (2) qualified and available Federal employees of other agencies.

(b) This section does not apply when OPM authorizes (1) the movement of an employee serving under career executive assignment to a career executive assignment at the same or lower grade under § 305.505(a) or § 305.506(a) or (2) the promotion, in the same position, of an employee whose position is reclassified upward without material change in duties.

§ 305.503 Career executive assignments from outside the competitive service.

(a) *Recruitment.* Subject to § 305.502, an agency may recruit from outside the competitive service for career executive assignment under such standards of merit and through such facilities as OPM may prescribe.

(b) *Order on list.* When an assignment is to be made under this section, the names of eligibles are entered on the appropriate list of eligibles in accordance with their numerical ratings except that the names of:

(1) Preference eligibles are listed in accordance with their augmented ratings and ahead of others having the same rating; and

(2) Preference eligibles who have a compensable service-connected disability of 10 percent or more are entered at the top of the list in the order of their ratings unless the vacancy is in a professional or scientific position. An agency is furnished a certificate from the top of the list containing the names of a sufficient number of eligibles to permit consideration of three eligibles in connection with each vacancy.

(c) *Selection.* An agency, with sole regard to merit and fitness, shall select an eligible from the highest three eligibles on the certificate who are available for appointment.

§ 305.504 Tenure and status of persons given career executive assignments.

(a) *Tenure.* A person given a career executive assignment is a career employee if he has completed, or is excepted from, the service requirement for career tenure. If he has not completed, or is not excepted from, the service requirement for career tenure he is a career-conditional employee.

(b) *Status.* A person given a career executive assignment who is required to serve or complete a probationary period by § 305.508 acquires a competitive status automatically on completion of probation.

§ 305.505 Position change.

(a) *Reassignment or demotion.* Subject to prior approval by OPM of the qualifications of the employee and, when applicable, to the provisions of Part 752 of this chapter, an agency may reassign or demote an employee serving under career executive assignment to another career executive assignment without regard to § 305.502.

(b) *Promotion.* Subject to § 305.502 and to prior approval by OPM of the qualifications of the employee, an agency may promote a career or career-conditional employee to an initial career executive assignment, or from one career executive assignment to another.

§ 305.506 Transfer.

(a) *To the same or lower grade.* Subject to prior approval by OPM of the qualifications of the employee, an agency may transfer to a career executive assignment an employee who is serving under career executive assignment at the same or higher grade without regard to § 3C5.502.

(b) *To a higher grade.* Subject to § 305.502 and to prior approval by OPM of the qualifications of the employee, an agency may transfer to a career executive assignment an employee who is serving with career or career-conditional tenure at a lower grade.

§ 305.507 Assignment of persons not serving with career or career-conditional tenure.

(a) *Coverage.* This section applies to present and former employees who have basic eligibility for noncompetitive appointment conferring career or career-conditional tenure under a law, Executive order, or Civil Service rule or regulation, but who are not serving with that tenure.

(b) *Authority.* Subject to § 305.502 (except for legislative and judicial employees eligible for appointment under section 3304(c) of title 5, United States Code), and subject to prior approval by OPM of the qualifications of the person, an agency may fill a position by career executive assignment of a person covered by this section.

§ 305.508 Probationary period.

An employee serving under career executive assignment serves or completes a probationary period of 1 year if a career or career-conditional employee is required by § 315.801 of this chapter to serve or to complete a probationary period under like circumstances. An agency may terminate an employee at any time during his probationary period. The employee is entitled to the procedures and the right of appeal set forth in §§ 315.804 to 315.807 of this chapter, as appropriate.

§ 305.509 Limited executive assignments.

(a) *Authorization.* OPM may authorize an agency to fill a position by limited executive assignment when:

(1) The position is expected to be of limited duration, or

(2) The agency establishes an unusual need for urgent staffing that cannot adequately be met under the procedures required for career executive assignments.

(b) *Time limit.* OPM shall specify a time limit within which an agency may use an authority for limited executive assignment, and may revoke the authority at any time.

(c) *Tenure and status.* An employee may serve a maximum of 5 continuous years and does not acquire competitive status under limited executive assignment.

(d) *Eligibility for within-grade increases.* An employee serving under a limited executive assignment is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

[35 FR 3217, Feb. 20, 1970]

§ 305.510 Change of limited executive assignment to another type of appointment.

If an employee completes 5 years of continuous service in an agency under limited executive assignment, the agency shall:

(a) Convert the limited executive assignment to a career executive assignment in the same position and grade;

(b) Subject to prior approval by OPM of the qualifications of the employee, assign him to another position at the same or lower grade under career executive assignment or noncareer executive assignment, as appropriate;

(c) Give the employee a career appointment to a continuing position in the competitive service at GS-15 or below; or

(d) Separate him from the service.

Subpart F—Noncareer Executive Assignments

§ 305.601 Positions filled by noncareer executive assignments.

(a) When, after consulting the agency concerned, OPM determines that the requirements of this section are met, it may authorize an agency to fill a position by noncareer executive assignment in the excepted service without following the procedures required for making career executive assignments.

(b) To qualify to be filled by noncareer executive assignment, a position must be one whose incumbent will:

(1) Be deeply involved in the advocacy of Administration programs and support of their controversial aspects;

(2) Participate significantly in the determination of major political policies of the Administration; or

(3) Serve principally as personal assistant to or adviser of a Presidential appointee or other key political figure.

(c) A position does not qualify to be filled by noncareer executive assignment if its principal responsibility is the internal management of an agency, or if it involves long-standing recognized professional duties and responsibilities resting on a body of knowledge essentially politically neutral in nature.

(d) In determining the positions to be filled by noncareer executive assignment under paragraph (a) of this section OPM shall:

(1) Limit the number of positions excepted to a relatively small proportion of the positions in the agency in GS-16, 17, and 18, taking into consideration the size of the agency and the nature of its program; and

(2) Define the area of the agency's activity in which noncareer executive assignments would be appropriate and specify organizational levels, as distinguished from grade levels, below which noncareer executive assignment would be inappropriate.

§ 305.602 Review of noncareer executive assignments.

OPM shall review periodically the positions filled by noncareer executive assignments under § 305.601. After consulting the agency concerned, it shall revoke the authorization to fill a position by noncareer executive assignment when it finds that the position no longer meets the qualifying criteria. Sections 315.701 and 316.702 of this chapter do not apply when the authorization for noncareer executive assignment is revoked under this section.

§ 305.603 Status and tenure.

An employee serving under a noncareer executive assignment is in the excepted service and does not acquire a competitive status on the basis of that service. A noncareer executive assignment is made without condition or limitation, except when the appointing agency determines that the tenure is indefinite.

[35 FR 3065, Feb. 17, 1970]

§ 305.604 Removal.

Subject to the provisions of Part 752 of this chapter, an appointing officer shall remove a person from a noncareer executive assignment when the qualifications or relationships required for the assignment change or cease to exist.

Subpart G—Transitional Provisions

§ 305.701 Change of indefinite or TAPER employment to another type of appointment.

If an employee was serving under indefinite or TAPER appointment when his position was made subject to the executive assignment system and he subsequently completes 5 years of continuous indefinite or TAPER employment in the agency, the agency shall:

(a) Convert the indefinite or TAPER employment to a career executive assignment in the same position and grade;

(b) Subject to prior approval by OPM of the qualifications of the employee, assign him to another position at the same or lower grade under career executive assignment or noncareer executive assignment, as appropriate;

(c) Give the employee a career or career-conditional appointment to a continuing position in the competitive service in GS-15 or below; or

(d) Separate him from the service.

PART 307—VETERANS READJUSTMENT APPOINTMENTS

Sec.
307.101 Definitions.
307.102 Basic eligibility.
307.103 Appointment authority.
307.104 Training or educational programs.
307.105 Conditions of employment.
307.106 Noncompetitive movement.
307.107 Reporting requirement.

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR 1970 Comp. p. 912; 38 U.S.C. 2014.

§ 307.101 Definitions.

In this part: (a) "Veteran" has the meaning given in section 2011(2)(A) of title 38, United States Code.

(b) "Vietnam era" is the period beginning August 5, 1964 and ending May 7, 1975.

(c) "Veterans readjustment appointment" is an excepted appointment made after April 8, 1970, under this part to a position otherwise in the competitive service of a veteran who served during the Vietnam era.

[40 FR 28445, July 7, 1975, as amended at 40 FR 44111, Sept. 25, 1975; 44 FR 3944, Jan 19, 1979]

§ 307.102 Basic eligibility.

(a) A veteran may receive a veterans readjustment appointment if s/he:

(1) Has served on active duty in the armed forces of the United States during the Vietnam era;

(2) Has completed not more than 14 years of education unless compensably disabled or discharged because of service-connected disabilities, in which case the 14-year educational requirement does not apply; and

(3) Agrees in writing that during employment under the appointment, veteran will pursue a training or educational program developed under § 307.104.

(b) A Vietnam era veteran may be given a veterans readjustment appointment at any time following separation from the service, except that no veterans readjustment appointment may be made under current statutory authority after September 30, 1986.

[44 FR 3944, Jan. 19, 1979, as amended at 47 FR 27539, June 25, 1982; 50 FR 13173, Apr. 3, 1985; 50 FR 42509, Oct. 21, 1985]

§ 307.103 Appointment authority.

(a) An agency may appoint any veteran eligible under § 307.102 who meets the qualification standards of the Office of Personnel Management for the position, to a position at GS-9 or below, or the equivalent in another pay system. On the basis of military and civilian experience, any veteran eligible under § 307.102 is deemed to meet the qualification standards for positions at GS-3 and below, and equivalent levels: *Provided*, The agency considers the veteran capable of performing the duties of the specific position.

(b) An agency may make an appointment to a position in GS-2 or below, or equivalent levels, when there is substantial opportunity for progression to at least GS-3, or the equivalent.

(c) An appointment under this section is subject to investigation by the Office. A law, Executive Order, or regulation which disqualifies a person for appointment in the competitive service also disqualifies a person for a veterans readjustment appointment.

[36 FR 6488, Apr. 6, 1971, as amended at 44 FR 3944, Jan. 19, 1979; 50 FR 13173, Apr. 3, 1985; 50 FR 42509, Oct. 21, 1985]

§ 307.104 Training or educational programs.

(a) Each agency shall develop a training or educational program for each employee given a veterans readjustment appointment.

(b) The Office shall establish and publish guidelines for developing training or education programs under this section.

[44 FR 3944, Jan. 19, 1979]

§ 307.105 Conditions of employment.

(a) An employee holding a veterans readjustment appointment serves subject to satisfactory performance of assigned duties and satisfactory participation in the required training or educational program. The agency shall separate an employee who does not meet these conditions, following the procedures in Part 432 of this chapter if the employee has completed one year of current continuous employment.

(b) Veterans readjustment appointees are entitled to limited appeal protections during their first year of service as set forth in § 315.806 of this chapter.

[44 FR 3944, Jan. 19, 1979, as amended at 50 FR 13173, Apr. 3, 1985; 50 FR 42509, Oct. 21, 1985]

§ 307.106 Noncompetitive movement.

(a) Subject to § 335.103 of this chapter an agency may reassign, promote, or transfer an employee serving under veterans readjustment appointment to any position for which the employee meets the qualifications standards of the Office.

(b) Noncompetitive movements under this section are subject to completion of applicable training or educational programs.

[44 FR 3944, Jan. 19, 1979]

§ 307.107 Reporting requirement.

As provided by 38 U.S.C. 2014 (d) and (e), OPM will, on at least an annual basis, obtain information and submit to the Congress a report on Government-wide progress in implementing the veteran readjustment appointment authority.

[50 FR 13173, Apr. 3, 1985, and 50 FR 42509, Oct. 21, 1985]

PART 308—VOLUNTEER SERVICE

Sec.
308.101 Definitions.
308.102 Eligibility and status.
308.103 Authority.

AUTHORITY: 5 U.S.C. 3111.

SOURCE: 44 FR 51183, Aug. 31, 1979, unless otherwise noted.

§ 308.101 Definitions.

In this part: "Student" is an individual who is enrolled not less than half-time in a high school, trade school, technical or vocational institute, junior college, college, university or other accredited educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the agency that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

"Volunteer Service" under the Act is limited to services performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experience for the student. Such service is to be uncompensated and will not be used to displace any employee or to staff a position which is a normal part of the agency's work force.

§ 308.102 Eligibility and status.

(a) *Minimum Age.* The selection of students to participate under the program should be in conformance with either Federal, State, or local laws and standards governing the employment of minors.

(b) *Status.* A student participating under an agency volunteer program is not considered to be a Federal employee for any purposes other than injury compensation or laws related to the Tort Claims Act. Service is not creditable for leave accrual or any other employee benefits.

§ 308.103 Authority.

Section 301 of the Civil Service Reform Act of 1978, Pub. L. 95-454, authorized Federal departments and agencies to establish programs designed to provide educationally related work assignments for students in nonpay status.

PART 310—EMPLOYMENT OF RELATIVES

Subpart A—Restrictions on the Employment of Relatives

Sec.
310.101 Coverage.
310.102 Definitions.
310.103 Restrictions.

Subpart B—Emergency Exceptions

310.201 Coverage.
310.202 Exceptions.

AUTHORITY: 5 U.S.C. 3302, 7301; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306, unless otherwise noted.

SOURCE: 33 FR 12418, Sept. 4, 1968, unless otherwise noted.

Subpart A—Restrictions on the Employment of Relatives

§ 310.101 Coverage.

This subpart applies to appointment, employment, promotion, or advancement in (a) the competitive service; and (b) the excepted service in the executive branch.

§ 310.102 Definitions.

In this subpart:

(a) "Relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) "Public official" means an officer, a member of the uniformed services, an employee, and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement.

(c) "Chain of Command" is the line of supervisory personnel that runs from a public official to the head of his agency.

§ 310.103 Restrictions.

(a) A public official shall not advocate one of his relatives for appointment, employment, promotion, or advancement to a position in his agency or in an agency over which he exercises jurisdiction or control.

(b) A public official shall not appoint, employ, promote, or advance to a position in his agency or in an agency over which he exercises jurisdiction or control:

(1) One of his relatives; or

(2) The relative of a public official of his agency, or of a public official who exercises jurisdiction or control over his agency, if the public official has advocated the appointment, employment, promotion, or advancement of that relative.

(c) For the purpose of this section, a public official who recommends a relative, or refers a relative for consideration by a public official standing lower in the chain of command, for appointment, employment, promotion, or advancement is deemed to have advocated the appointment, employment, promotion, or advancement of the relative.

(d) This section does not prohibit the appointment in the competitive service of a preference eligible if (1) his name is within reach for selection from an appropriate certificate of eligibles and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible.

Subpart B—Emergency Exceptions

§ 310.201 Coverage.

This subpart applies to an office, agency, or other establishment in the executive, legislative, or judicial branch of the Federal Government, and in the government of the District of Columbia.

(5 U.S.C. 3110)

§ 310.202 Exceptions.

When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in the Federal Personnel Manual, a public official may employ relatives to meet those needs without regard to the restrictions in section 3110 of title 5, United States Code, and this part. Appointments under these conditions are temporary not to exceed 1 month, but may be extended for a second month if the emergency need still exists.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54692, Sept. 21, 1979]

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

NOMENCLATURE CHANGE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subpart A—[Reserved]

Subpart B—The Career-Conditional Employment System

Sec.
315.201 Service requirement for career tenure.
315.202 Conversion from career-conditional to career tenure.

Subpart C—Career or Career-Conditional Employment From Registers

315.301 Tenure on appointment from register.
315.302 Acquisition of competitive status.

Sec.

Subpart D—Career or Career-Conditional Employment by Reinstatement

315.401 Reinstatement.
315.402 Tenure on reinstatement.
315.403 Acquisition of competitive status.

Subpart E—Career or Career-Conditional Employment by Transfer

315.501 Agency authority.
315.502 Tenure on transfer.
315.503 Acquisition of competitive status.

Subpart F—Career or Career-Conditional Appointment Under Special Authorities

315.601 Appointment of former employees of the Canal Zone Merit System or Panama Canal Employment System.
315.602 Appointment based on service in the Office of the President or Vice-President or on the White House Staff.
315.603 Appointment based on former incumbency of a position brought into the competitive service.
315.604 Employment of disabled veterans who have completed a training course under Chapter 31 of title 38, United States Code.
315.605 Appointment of former ACTION volunteers.
315.606 Noncompetitive appointment of certain present and former Foreign Service officers and employees.
315.607 Noncompetitive appointment of present and former Peace Corps personnel.
315.608 Noncompetitive appointment of certain former overseas employees.
315.609 Appointment based on service in United States positions of the Panama Canal Commission.

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

315.701 Incumbents of positions brought into the competitive service.
315.702 Employees serving without competitive examination in rare cases.
315.703 Employees formerly reached on a register.
315.704 Conversion to career employment from indefinite or temporary employment.
315.705 Employees serving under transitional or veterans readjustment appointments.
315.706 Certain nonpermanent employees of the Department of Energy.
315.707 Disabled veterans.
315.708 Conversion based on service as a Presidential Management Intern.

Sec.
315.709 Mentally retarded and severely physically handicapped employees serving under Schedule A appointments.
315.725 Disqualifications.

Subpart H—Probation on Initial Appointment to a Competitive Position

315.801 Probationary period; when required.
315.802 Length of probationary period.
315.803 Agency action during probationary period (general).
315.804 Termination of probationers for unsatisfactory performance or conduct.
315.805 Termination of probationers for conditions arising before appointment.
315.806 Appeal rights to the Merit Systems Protection Board.

Subpart I—Probation on Initial Appointment to a Supervisory or Managerial Position

315.901 Statutory requirement.
315.902 Definitions.
315.903 Coverage.
315.904 Basic requirement.
315.905 Length of the probationary period.
315.906 Crediting service toward completion of the probationary period.
315.907 Failure to complete the probationary period.
315.908 Appeals.
315.909 Relationship to other actions.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, unless otherwise noted. §§ 315.605 and 315.801(a)(6) also issued under Pub. L. 93-113 and E.O. 11103, 3 CFR, 1959–1963 Comp., p. 762; §§ 315.201(c)(3), 315.601 and 315.801(a)(3) interpret and apply 76 A Stat. 18; 2 C.Z.C. 149(c)(2); E.O. 9830, 3 CFR, 1943–1948 Comp., p. 606, unless otherwise noted.

SOURCE: 33 FR 12418, Sept. 4, 1968, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—The Career-Conditional Employment System

§ 315.201 Service requirement for career tenure.

(a) *Service requirement.* Except as provided in paragraph (c) of this section, 3 years of creditable service are required for an employee to become a career employee.

(b) *Creditable service.* OPM shall publish in the Federal Personnel

Manual the conditions under which service may be credited in meeting the service requirement in paragraph (a) of this section.

(c) *Exceptions from service requirement.* The service requirement for career tenure does not apply to:

(1) An appointment to a position required by law to be filled on a permanent basis, or a conversion under this part while the employee is serving in such a position;

(2) An appointment from a register of a person who once completed the service requirement for career tenure;

(3) An appointment under § 315.601 of a former Canal Zone Merit System employee who completed the service requirement for career tenure under that system; or

(4) The reinstatement of a person who once completed the service requirement for career tenure.

[33 FR 12418, Sept. 4, 1968, as amended at 43 FR 34428, Aug. 4, 1978]

§ 315.202 Conversion from career-conditional to career tenure.

A career-conditional employee becomes a career employee automatically on completion of the service requirement for career tenure.

Subpart C—Career or Career-Conditional Employment From Registers

§ 315.301 Tenure on appointment from register.

(a) Except as provided in paragraph (b) of this section, an eligible appointed from a register for other than temporary or term employment becomes a career-conditional employee.

(b) An eligible appointed from a register for other than temporary or term employment becomes a career employee when he is excepted from the service requirement for career tenure by § 315.201(c).

§ 315.302 Acquisition of competitive status.

An employee appointed as provided in § 315.301 acquires a competitive status automatically on completion of probation.

Subpart D—Career or Career-Conditional Employment by Reinstatement

§ 315.401 Reinstatement.

(a) *Agency authority.* An agency may reinstate a person who had a competitive status or was serving probation when he was separated.

(b) *Time limit.* There is no time limit on the reinstatement of a preference eligible or a person who completed the service requirement for career tenure. An agency may reinstate a nonpreference eligible who has not completed the service requirement for career tenure only within 3 years following the date of his separation.

§ 315.402 Tenure on reinstatement.

(a) Except as provided in paragraph (b) of this section, a person who is reinstated becomes a career-conditional employee.

(b) A person who is reinstated becomes a career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

§ 315.403 Acquisition of competitive status.

A person who was serving probation when he was separated and who is reinstated under § 315.401 acquires a competitive status automatically on completion of probation.

Subpart E—Career or Career-Conditional Employment by Transfer

§ 315.501 Agency authority.

An agency may appoint by transfer a career or career-conditional employee of another agency.

§ 315.502 Tenure on transfer.

(a) *General rule.* Except as provided in paragraph (b) of this section, a career employee who transfers remains a career employee and a career-conditional employee who transfers remains a career-conditional employee.

(b) *Exceptions.* (1) A career-conditional employee who transfers to a position in the postal field service or to a position required by law to be filled on a permanent basis becomes a career employee.

(2) A career employee who transfers from a position in the postal field service or from a position required by law to be filled on a permanent basis to a position under the career-conditional employment system becomes a career-conditional employee unless he has completed the service requirement for career tenure.

[33 FR 12418, Sept. 4, 1968, as amended at 34 FR 6639, Apr. 18, 1969]

§ 315.503 Acquisition of competitive status.

An employee who was serving probation when he was appointed under § 315.501 acquires a competitive status automatically on completion of probation.

Subpart F—Career or Career-Conditional Appointment Under Special Authorities

§ 315.601 Appointment of former employees of the Canal Zone Merit System or Panama Canal Employment System.

(a) *Agency authority.* This section may be used by an agency to appoint noncompetitively, for other than temporary or term employment, a United States citizen separated from a career or career-conditional appointment under the Canal Zone Merit System, which was in effect before March 31, 1982, or under the Panama Canal Employment System, which became effective on March 31, 1982. (Appointments of such persons for temporary or term employment are to be made under applicable provisions of Part 316 of this chapter.)

(b) *Service requirement.* An agency may appoint such a former employee under this section only when, immediately prior to separation from a qualifying appointment, the employee served continuously for at least one year under a nontemporary appointment in the Canal Zone Merit System, the Panama Canal Employment System, or a combination of the two systems.

(c) *Time limits.* (1) There is no time limit on the appointment under this section of an employee who:

(i) Is a preference eligible; or

(ii) Has completed at least 3 years of service, which did not include any break in service longer than 30 days, under one or more career-conditional or career appointments in the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) An agency may appoint under this section an employee who does not meet the conditions in (c)(1) of this section provided no more than 3 years have elapsed since:

(i) separation from a qualifying Canal Zone Merit System or Panama Canal Employment System appointment; or

(ii) separation from service in Panama in a position excluded from the Canal Zone Merit System or Panama Canal Employment System, when such service immediately followed service under a qualifying appointment in one of those systems.

(d) *Tenure on appointment.* On appointment under paragraph (a) of this section: (1) A former career employee of the Canal Zone Merit System or Panama Canal Employment System becomes a career employee.

(2) A former Canal Zone Merit System and/or Panama Canal Employment System employee whose service from the date of career-conditional appointment in the Canal Zone Merit System or Panama Canal Employment System through the date of noncompetitive appointment under this section, inclusive, does not include any break in service of more than 30 days and totals at least 3 years becomes a career employee.

(3) All other former Canal Zone Merit System and Panama Canal Employment System employees become career-conditional employees.

(e) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section automatically acquires a competitive status:

(1) On appointment, if he or she has satisfactorily completed a 1-year probationary period under the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) On satisfactory completion of probation in accordance with § 315.80 (a)(3) if he or she had not completed a 1-year probationary period under the

Canal Zone Merit System or Panama Canal Employment System.

(22 U.S.C. 3651 and 3652)

[48 FR 13951, Apr. 1, 1983]

§ 315.602 Appointment based on service in the Office of the President or Vice-President or on the White House Staff.

(a) *Agency authority.* An agency may appoint noncompetitively a person who has served at least 2 years in the immediate Office of the President or Vice-President or on the White House Staff, provided that the appointment is effected without a break in service of 1 full workday.

(b) *Tenure on appointment.* (1) Except as provided in paragraph (b)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires a competitive status automatically on appointment.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54692, Sept. 21, 1979]

§ 315.603 Appointment based on former incumbency of a position brought into the competitive service.

(a) *Agency authority*—(1) *Employee in military service.* An agency may appoint a former incumbent of a permanent excepted position who was serving under an appointment not limited to 1 year or less, or of a position in public or private enterprise when the position was brought into the competitive service on a continuing basis and who left his position after June 30, 1950, to perform active military service when:

(i) The position was brought into the competitive service before or during his military service or during the period in which he had restoration rights thereto, and he left the position to enter military service before the end of the time limits set forth in § 315.701(c);

(ii) He has been released from military service under honorable conditions;

(iii) The agency submits a recommendation for his appointment to OPM within 6 months after release from military service under honorable conditions or after hospitalization continuing after release for not more than 1 year; and

(iv) He performed 6 months of satisfactory service immediately before the date his position was brought into the competitive service in a position or positions brought into the competitive service, or in the civilian executive branch of the Government, unless OPM has excepted his particular type of case from this requirement by a provision of the Federal Personnel Manual.

(2) *Employee separated.* An agency may appoint a former incumbent of a permanent excepted position under an appointment not limited to 1 year or less or of a position in public or private enterprise when the position was brought into the competitive service on a continuing basis, and who was separated thereafter, when:

(i) He is recommended for appointment within the time limits set forth in § 315.701(c); and

(ii) He performed 6 months of satisfactory service immediately before the date his position, was brought into the competitive service, in a position or positions brought into the competitive service or in the civilian executive branch of the Government, unless OPM has excepted his particular type of case from this requirement by a provision of the Federal Personnel Manual.

(b) *Review of disapproved recommendations.* Agencies shall establish procedures for reviewing disapprovals of recommendations for appointment under this section when such review is requested within 6 months after the date of disapproval.

(c) *Tenure on appointment.* (1) Except as provided in paragraph (c)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he has complet-

ed the service requirement for career tenure or is excepted from it by § 315.201(c).

(d) *Acquisition of competitive status.* (1) A person appointed under paragraph (a)(1) of this section acquires a competitive status automatically on appointment.

(2) A person appointed under paragraph (a)(2) of this section acquires a competitive status automatically on completion of probation.

[33 FR 12418, Sept. 4 1968, as amended at 43 FR 34428, Aug. 4, 1978]

§ 315.604 Employment of disabled veterans who have completed a training course under Chapter 31 of title 38, United States Code.

(a) When a disabled veteran satisfactorily completes an approved course of training prescribed by the Veterans Administration under chapter 31, title 38, United States Code, any agency may appoint the veteran noncompetitively to the position of class of positions for which trained.

(b) *Conversion.* An agency may convert to career or career-conditional employment a person appointed under paragraph (a) of this section.

(c) *Disqualifications.* Any law, Executive order, or civil service rule or regulation which would disqualify an applicant for appointment also disqualifies him or her for conversion of his or her employment to career or career-conditional employment under this section.

(d) *Tenure on approval of recommendation.* When an agency converts the employee under paragraph (b) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (d)(2) of this section; and

(2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(e) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54692, Sept. 21, 1979, as amended at 44 FR 55132, Sept. 25, 1979]

§ 315.605 Appointment of former ACTION volunteers.

(a) *Agency authority.* An agency in the executive branch may appoint noncompetitively, for other than temporary employment, a person whom the Director of ACTION certifies as having served satisfactorily as a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2051 et seq.), or as a VISTA volunteer under the Economic Opportunity Act of 1964 (42 U.S.C. 2991 et seq.) or the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113), or as a full-time community volunteer (including criminal justice volunteer, volunteer in justice, and VET REACH volunteer) under part C of title I of Pub. L. 93-113. To be qualifying under this section VISTA and community volunteer service must total at least 1 year. In addition, a community volunteer must have served prior to October 1, 1976.

(b) *Time limit.* An agency in the executive branch may make an appointment under this section only within 1 year after the person completes the qualifying service. (For Community volunteers who have completed their service before March 10, 1978, the 1-year period begins on March 10, 1978.) However, an agency may extend the period for 2 more years to a total of 3 years if the person, after the qualifying service, is:

(1) In the military service;

(2) Studying at a recognized institution of higher learning; or

(3) In another activity which, in the agency's view, warrants extension.

(c) *Conditions.* Any law, Executive order, or regulation that disqualifies an applicant for appointment also disqualifies an applicant for appointment under this section.

(d) *Tenure on appointment.* (1) Except as provided in paragraph (d)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) or this section becomes a career employee if excepted from the service requirement for career tenure by § 315.201(c).

(e) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires a competitive status automatically on completion of probation.

(E.O. 12034, 43 FR 1917, Jan. 13, 1978)

[39 FR 961, Jan. 4, 1974, as amended at 43 FR 20954, May 16, 1978; 43 FR 34428, Aug. 4, 1978]

§ 315.606 Noncompetitive appointment of certain present and former Foreign Service officers and employees.

Subject to the conditions prescribed by OPM in the Federal Personnel Manual, an agency may appoint noncompetitively a present or former career officer or employee of the Foreign Service who was appointed under authority of the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.), or legislation that supplements or replaces that Act, if:

(a) He qualifies under the requirements set forth in Executive Order 11219, and

(b) OPM has concurred in his present or former agency's plan, and substantive changes thereto, for noncompetitive entry of civil service employees into the Foreign Service positions of that agency.

(E.O. 11219, 3 CFR, 1964-1965 Comp., p. 303)

§ 315.607 Noncompetitive appointment of present and former Peace Corps personnel.

(a) An agency in the executive branch may appoint noncompetitively, for other than temporary appointment, an individual:

(1) Who has completed no less than 36 months of continuous service without a break in service of 3 days or more under section 7(a) of the Peace Corps Act (22 U.S.C. 2506) which pertains to the appointment of Peace Corps staff (not volunteers);

(2) Whom the Director of the Peace Corps certifies as having satisfactorily served under such an appointment; and

(3) Who meets OPM qualification standards—including any written test requirements—for the position in question.

(4) Who is not a Peace Corps volunteer as this paragraph does not apply to Peace Corps volunteers.

(b) *Time limitations.* (1) An individual's eligibility under this section extends through September 30, 1982, or until 3 years after separation from qualifying service with the Peace Corps, whichever is later.

(2) An agency may not extend this period.

(3) An agency may not extend this period.

(c) *Conditions.* Any law, Executive order, or regulation which disqualifies an applicant for appointment in the competitive service also disqualifies an applicant for appointment under this section.

(d) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires competitive status automatically upon completion of probation.

(e) *Tenure on appointment.* (1) Except as provided in paragraph (e)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee if excepted from the service requirement for career tenure by § 315.201(c).

(22 U.S.C. 2506, 93 Stat. 371, E.O. 12137; 22 U.S.C. 2506, 94 Stat. 2158)

[45 FR 43365, June 27, 1980, as amended at 46 FR 35079, July 7, 1981]

§ 315.608 Noncompetitive appointment of certain former overseas employees.

(a) Under the authority of Executive Order 12362, an agency in the executive branch may appoint noncompetitively to a competitive service position within the United States an individual who is a citizen of or owes permanent allegiance to the United States and who:

(1) Accumulated 24 months of creditable overseas service in an appropriated fund position(s) under a local hire appointment(s) within any ten-year period beginning after January 1, 1980;

(2) Received a fully successful or better (or equivalent) performance rating for the period of creditable

overseas service (this requirement applies to service accrued after January 1, 1984).

(3) Was a family member of a civilian employee or of a member of a uniformed service (the civilian or uniformed sponsor) who was officially assigned to the overseas area and was in this status during the 24-month period of creditable overseas service;

(4) Accompanied the civilian or uniformed sponsor on official assignment in the overseas area during the period of creditable overseas service;

(5) Is appointed within two years after returning to the United States from the overseas tour of duty during which he or she acquired eligibility by meeting the requirements of paragraphs (a) (1) through (4) of this section.

(b) *Definitions.* In this subpart:

"Accompanied the civilian or uniformed sponsor on official assignment in the overseas area" means family members residing in the overseas area while their sponsor is officially assigned to an overseas post of duty. This definition does not require the family member to physically reside with the sponsor at all times or to have travelled with the sponsor to or from the overseas area.

"Creditable overseas service" means the period of employment when the employee was serving under a local hire appointment(s) with a fully successful or better performance rating and residing in the overseas area as a family member accompanying a civilian employee or member of a uniformed service on official assignment.

"Family member" means a spouse or unmarried child (under 23 years of age) of a member of a uniformed service or Federal civilian employee officially assigned to the overseas area.

"Federal civilian employee" means an employee of the executive, judicial, and legislative branches of the Government of the United States who is officially assigned to the overseas area and serves in an appropriated fund position.

"Local hire appointments" are appointments made from applicants residing in the overseas area which are not actually or potentially permanent. For purposes of this subpart only, this definition includes nonpermanent employment as a local national employee paid from appropriated funds, or under 50 U.S.C. 403j., Public Law 86-36, or the Berlin Tariff Agreement; overseas limited appointments under 5 CFR 301.201, nonpermanent excepted appointments under Schedule A 213.3106(b)(6) or Schedule A 213.3106(d)(1); an "American family member" or "Part-time intermittent temporary" appointment in U.S. diplomatic establishments; or any other nonpermanent overseas appointment in the competitive or excepted service so designated by the Office of Personnel Management in the Federal Personnel Manual.

"Member of a uniformed service" means personnel of the Armed Forces (including the Coast Guard), the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration officially assigned to the overseas area.

"Overseas area" means duty locations outside the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

"Sponsor" means a member of a uniformed service or civilian employee on official assignment to the overseas area who is the spouse or parent of the family member.

"United States" means the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(c) *Conditions.* Any law, Executive order or regulation that disqualifies an applicant for appointment also disqualifies an applicant for appointment under this section.

(d) *Tenure of appointment.* A person appointed under this section becomes a career-conditional employee.

(e) *Acquisition of competitive status.* A person appointed under this section acquires competitive status automatically upon completion of probation.

(E.O. 12362, 47 FR 21231)

[48 FR 52868, Nov. 23, 1983]

§315.609 Appointment based on service in United States positions of the Panama Canal Commission.

(a) *Agency authority.* An agency may appoint noncompetitively, for other than temporary or term employment, a United States citizen who has served under nontemporary appointment in a continuing career position of the Panama Canal Commission located in the United States.

(b) *Service requirement.* An agency may appoint such an individual under this section only when, immediately prior to separation from a qualifying appointment with the Panama Canal Commission in the United States, the individual served continuously for at least 1 year under such qualifying appointment or under a combination of such appointment and nontemporary appointment in the Canal Zone Merit System or the Panama Canal Employment System.

(c) *Time limits.* (1) There is no time limit on the appointment under this section of an employee who:

(i) Is a preference eligible; or

(ii) Has completed at least 3 years of service, which did not include any break in service longer than 30 days, under one or more nontemporary appointments in Panama Canal Commission positions located in the United States or in positions under the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) An agency may appoint under this section an employee who does not meet the conditions in (c)(1) of this section only if no more than 3 years have elapsed since the individual's separation from a qualifying appointment.

(d) *Tenure on appointment.* (1) On appointment under paragraph (a) of this section, an individual whose qualifying service does not include any break in service of more than 30 days and totals at least 3 years becomes a career employee.

(2) All other individuals appointed under this section become career-conditional employees.

(e) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section automatically acquires a competitive status:

(1) On appointment, if he or she has satisfactorily completed a 1-year trial period, which did not include more than 22 workdays in nonpay status, during qualifying employment with the Panama Canal Commission.

(2) On satisfactory completion of probation in accordance with § 315.801(a)(3) if he or she had not completed such a 1-year trial period.

(22 U.S.C. 3651, 3652)

[48 FR 29667, June 28, 1983]

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

§ 315.701 Incumbents of positions brought into the competitive service.

(a) *Employee coverage.* This section applies to an employee retained under §§ 316.701 and 316.702 of this chapter who:

(1) Was serving in a permanent excepted position under an appointment not limited to 1 year or less, or in a public or private enterprise in a position which the agency determines to be a continuing one, at the time his position was brought into the competitive service; and

(2) Performed 6 months of satisfactory service immediately before the date his position was brought into the competitive service, in a position or positions brought into the competitive service, or in the civilian executive branch of the Government, unless OPM has excepted his particular type of case from this requirement by a provision in the Federal Personnel Manual.

(b) *Eligibility for conversion.* Within the time limits set forth in paragraph (c) of this section, the employment of an employee covered by paragraph (a) of this section may be converted to career or career-conditional employment.

(c) *Time limits.* Conversion may be initiated under paragraph (b) of this section only within 6 months after the position is brought into the competitive service, except that:

(1) When it is necessary for OPM to determine that § 316.701 or § 316.702 applies to a group of positions, the rec-

ommendation shall be submitted within 6 months after OPM advises the agency of its determination; and

(2) When an employee is absent on an assignment to an organization or agency from which reemployment rights are provided under Part 352 of this chapter or by statute, the conversion shall be initiated within 6 months after the employee's return from such assignment, when reemployment occurs within the time limits prescribed in the applicable statute or regulation;

(3) When an employee is absent on approved leave without pay, the conversion shall be initiated within 6 months of the employee's return to duty, when such return occurs within time limits authorized by the agency; and

(4) When an employee who is serving on military duty or who is separated and rehired during the 6-month period after the position is brought into the competitive service is eligible for conversion under the provisions of § 315.603, the conversion shall be initiated within the time limits prescribed by that section.

(d) *Tenure on approval of conversion.* Upon conversion under paragraph (b) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(e) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on completion of probation.

(f) *Review of disapproved conversions.* Agencies shall establish procedures for reviewing disapprovals of conversions under this section when such review is requested within 6 months after the date of the disapproval.

[33 FR 12418, Sept. 4, 1968, as amended at 43 FR 34428, Aug. 4, 1978]

§ 315.702 Employees serving without competitive examination in rare cases.

(a) *Recommendation by agency.* An agency may recommend to OPM that the employment of an employee who has completed at least 1 year of satisfactory service under § 316.601 be converted to career or career-conditional employment.

(b) *Tenure on approval of recommendation.* When OPM approves the agency's recommendation submitted under paragraph (a) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

§ 315.703 Employees formerly reached on a register.

(a) *Employee coverage.* An employee who was serving in a position when his or her name was within reach for career or career-conditional appointment on a register appropriate for that position may be converted to career or career-conditional employment when:

(1) The employee's name was included on an appropriate certificate issued while the employee was serving in the position, or reconstruction of the appropriate register verifies that the employee would have been within reach;

(2) The register was being used for career and career-conditional appointments when he or she was reached;

(3) He or she has been continuously employed since being reached;

(4) Conversion is initiated either before the expiration of the register or during a period of continuous service since the employee was reached; and

(5) When the employee is a nonpreference eligible who was first reached after February 1, 1955, the Office, or the agency, in accordance with an agreement with the Office, determines

that satisfactory reasons existed for passing over any preference eligible who preceded the employee on the register when he or she was reached and who is still within reach and available for appointment.

(b) *Tenure on conversion.* An employee whose appointment is converted under paragraph (a) of this section becomes:

(1) A career-conditional employee except as provided in paragraph (b)(2) of this section;

(2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on completion of probation.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 55132, Sept. 25, 1979]

§ 315.704 Conversion to career employment from indefinite or temporary employment.

(a) *General.* Employees serving after February 7, 1968, in competitive positions under indefinite appointments or temporary appointments pending establishment of a register or as status quo employees acquire competitive status and are entitled to have their employment converted to career employment when such employees:

(1) Complete a total of at least 3 years of service in such a position under one or more such appointments without a break in service of more than 30 calendar days or without an interruption by nonqualifying service of more than 30 calendar days;

(2) Have rendered satisfactory service for the 12 months immediately preceding the conversion; and

(3) Meet applicable qualification requirements for the positions and are otherwise eligible for career employment. This paragraph does not apply to employees serving under an overseas limited appointment or in positions above GS-15 or equivalent.

(b) *Creditable service.* (1) In computing creditable service under paragraph (a) of this section for an employee who left a competitive position in which he or she was serving under a qualifying appointment covered in paragraph (a) of this section to enter the armed forces and who is reemployed in such a position within 120 calendar days after separation under honorable conditions, the period from the date he or she left the position to the date of reemployment is creditable.

(2) The Office shall publish in the Federal Personnel Manual the conditions under which full-time, part-time, and intermittent employment is creditable in meeting the service requirement under paragraph (a) of this section.

(c) *Termination after failure to meet conversion requirements.* An employing agency shall terminate employees covered by paragraph (a) of this section not later than 90 days after they complete the 3-year service requirement referred to in paragraph (a)(1) of this section, if they have not met the requirements and conditions of paragraphs (a) (2) and (3) of this section before the end of the 90-day period. For an employee who is reemployed after intervening service in the armed forces, the 90-day period begins on the date of reemployment if the employee's combined civilian and military service satisfies the 3-year service requirement on that date.

(d) *Administrative error.* When an employee has met the service requirement under paragraph (a)(1) of this section but, because of administrative error or oversight, has not been converted to career employment within the time limits prescribed in this section, the employing agency may effect the employee's conversion as of the date on which he or she met the service requirement, even though the time limit for such conversion has expired.

[44 FR 54692, Sept. 21, 1979. Redesignated at 44 FR 63080, Nov. 2, 1979]

§ 315.705 Employees serving under transitional or veterans readjustment appointments.

(a) *Agency action.* (1) An agency shall convert the employment of an employee who has served continuously under a transitional appointment for at least 1 year to career or career-conditional employment within 90 calendar days after he completes the program of education or training approved for him.

(2) Within 30 calendar days after an employee completes (i) 2 years of substantially continuous service under a veterans readjustment appointment or under a combination of transitional and veterans readjustment appointments and (ii) his training or educational programs, the employing agency shall convert his appointment to career or career-conditional employment.

(b) *Tenure.* Upon conversion of his employment, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee if he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section, acquires a competitive status automatically on conversion.

(E.O. 11521, 3 CFR, 1966-1970 Comp., 954)

[35 FR 5661, Apr. 8, 1970. Redesignated at 44 FR 63080, Nov. 2, 1979]

§ 315.706 Certain nonpermanent employees of the Department of Energy.

(a) *General.* Employees transferred to the Department of Energy under Pub. L. 95-91, who are serving in nonpermanent appointments made under competitive procedures of the former Atomic Energy Commission or Energy Research and Development Administration and are determined by the Department to be performing continuing functions, may be converted to career or career-conditional by OPM upon recommendation by the Department.

(b) *Tenure upon conversion.* Employees converted under this section become career-conditional employees unless they have completed the service requirement for career tenure.

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires competitive status automatically.

[43 FR 14002, Apr. 4, 1978. Redesignated at 44 FR 63080, Nov. 2, 1979]

§ 315.707 Disabled veterans.

(a) *Eligibility.* (1) Subject to requirements concerning qualifications and probationary period published by the Office in the Federal Personnel Manual, an agency may convert the employment of a disabled veteran who meets the conditions below to career or career-conditional employment from a time-limited appointment of more than 60 days.

(2) To be eligible for conversion under this paragraph, the veteran must:

(i) Have been retired from active military service with a disability rating of 30 percent or more;

(ii) Have been rated by the Veterans Administration within the preceding year as having a compensable service-connected disability of 30 percent or more; or

(iii) Have had such a rating by the Veterans Administration at the time of a qualifying temporary appointment effected within the year immediately preceding the conversion.

(b) *Tenure on conversion.* (1) Except as provided in paragraph (b)(2) of this section, a person converted under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee if excepted from the service requirement for career tenure by § 315.201(c).

(c) *Acquisition of competitive status.* A person converted under paragraph (a) of this section acquires a competitive status automatically on completion of probation.

(5 U.S.C. 3112)

[44 FR 44813, July 31, 1979. Redesignated at 44 FR 63080, Nov. 2, 1979]

§ 315.708 Conversion based on service as a Presidential Management Intern.

An agency may convert noncompetitively to career or career-conditional employment, a Presidential Management Intern who:

(a) Has satisfactorily completed a 2-year Presidential Management Internship at the time of conversion;

(b) Is recommended for conversion within 90 calendar days before completion of the internship; and

(c) Meets the citizenship requirement.

(E.O. 12364, 47 FR 22931, May 24, 1982)

[44 FR 63080, Nov. 2, 1979, as amended at 47 FR 57655, Dec. 28, 1982]

§ 315.709 Mentally retarded and severely physically handicapped employees serving under Schedule A appointments.

(a) *Coverage.* Employees appointed under §§ 213.3102(t) and 213.3103(u) of this chapter may have their appointments converted to career or career-conditional appointments when they:

(1) Complete 2 or more years of satisfactory service, without a break or more than 30 days, under nontemporary Schedule A appointments;

(2) Are recommended for conversion by their supervisors;

(3) Meet all requirements and conditions governing career and career-conditional appointment except those requirements concerning competitive selection from a register and medical qualifications; and

(4) Are converted without a break in service of one workday.

(b) *Tenure on conversion.* An employee converted under paragraph (a) of this section becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee if he or she has completed 3 years of substantially continuous service in nontemporary appointments under § 213.3102(t) or § 213.3102(u) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

(5 U.S.C. 3301, 3302; E.O. 12125)

[44 FR 66574, Nov. 20, 1979; 44 FR 72569, Dec. 14, 1979]

§ 315.725 Disqualifications.

Any law, executive order, or civil service rule or regulation which would disqualify an applicant for appointment shall also disqualify an employee for conversion of his employment to career or career-conditional employment under this subpart.

[33 FR 12418, Sept. 4, 1968. Redesignated at 44 FR 63080, Nov. 2, 1979]

Subpart H—Probation on Initial Appoinment to a Competitive Position

§ 315.801 Probationary period; when required.

(a) The first year of service of an employee who is given a career or career-conditional appointment under this part is a probationary period when the employee:

(1) Was appointed from a register;

(2) Was reinstated under § 315.401, unless during any period of service which affords a current basis for reinstatement, the employee completed a probationary period or served with competitive status under an appointment which did not require him to serve a probationary period;

(3) Was appointed under § 315.601(a) as a former employee of the Canal Zone Merit System, unless he satisfactorily completed a 1-year probationary period under that system;

(4) Was appointed under § 315.603(a)(2) on the basis of his former incumbency of a position brought into the competitive service;

(5) Has had his employment converted under § 315.701 or § 315.703 from another type of employment; or

(6) Was appointed under § 315.605 as a former Peace Corps volunteer or volunteer leader or as a VISTA volunteer.

(7) Was appointed under § 315.607 as a former Peace Corps staff member under section 2(a) of the Peace Corps Act (22 U.S.C. 2506).

(b) A person who is:

(1) Transferred under § 315.501; or

(2) Promoted, demoted, or reassigned; before he completed probation is required to complete the probationary period in the new position.

(c) A person who is reinstated from the Reemployment Priority List to a position in the same agency and the same commuting area does not have to serve a new probationary period, but, if separated during probation, is required to complete the probationary period in the new position.

(22 U.S.C. 2506, 93 Stat. 371, E.O. 12137)

[33 FR 12418, Sept. 4, 1968, as amended at 39 FR 962, Jan. 4, 1974; 45 FR 43365, June 27, 1980]

§ 315.802 Length of probationary period.

(a) The probationary period required by § 315.801 is 1 year.

(b) OPM shall publish in the Federal Personnel Manual a statement of the conditions under which prior service is counted toward completion of a probationary period.

§ 315.803 Agency action during probationary period (general).

The agency shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate his services during this period if he fails to demonstrate fully his qualifications for continued employment.

§ 315.804 Termination of probationers for unsatisfactory performance or conduct.

When an agency decides to terminate an employee serving a probationary or trial period because his work performance or conduct during this period fails to demonstrate his fitness or his qualifications for continued employment, it shall terminate his services by notifying him in writing as to why he is being separated and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the agency's conclusions as to the inadequacies of his performance or conduct.

§ 315.805 Termination of probationers for conditions arising before appointment.

When an agency proposes to terminate an employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before his appointment, the employee is entitled to the following:

(a) *Notice of proposed adverse action.* The employee is entitled to an advance written notice stating the reasons, specifically and in detail, for the proposed action.

(b) *Employee's answer.* The employee is entitled to a reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of his answer. If the employee answers, the agency shall consider the answer in reaching its decision.

(c) *Notice of adverse decision.* The employee is entitled to be notified of the agency's decision at the earliest practicable date. The agency shall deliver the decision to the employee at or before the time the action will be made effective. The notice shall be in writing, inform the employee of the reasons for the action, inform the employee of his right of appeal to the Merit Systems Protection Board (MSPB), and inform him of the time limit within which the appeal must be submitted as provided in § 315.806(d).

§ 315.806 Appeal rights to the Merit Systems Protection Board.

(a) *Right of appeal.* An employee may appeal to the Merit Systems Protection Board in writing an agency's decision to terminate him under § 315.804 or § 315.805 only as provided in paragraphs (b) and (c) of this section. The Merit Systems Protection Board review is confined to the issues stated in paragraphs (b) and (c) of this section.

(b) *On discrimination.* An employee may appeal under this paragraph a termination not required by statute which he or she alleges was based on partisan political reasons or marital status.

(c) *On improper procedure.* A probationer whose termination is subject to § 315.805 may appeal on the ground that his termination was not effected in accordance with the procedural requirements of that section.

(d) An employee may appeal to the Board under this section a termination which the employee alleges was based on discrimination because of race, color, religion, sex, or national origin; or age, provided that at the time of the alleged discriminatory action the employee was at least 40 years of age;

or physical handicap, only if such discrimination is raised in addition to one of the issues stated in paragraph (b) or (c) of this section.

(5 U.S.C. 7701, et seq.)

[33 FR 12418, Sept. 4, 1968, as amended at 40 FR 15380, Apr. 7, 1975; 44 FR 48951, Aug. 21, 1979]

Subpart I—Probation on Initial Appointment to a Supervisory or Managerial Position

AUTHORITY: 5 U.S.C. 3321, E.O. 12107.

SOURCE: 44 FR 44811, July 31, 1979, unless otherwise noted.

§ 315.901 Statutory requirement.

5 U.S.C. 3321 provides for "a period of probation . . . before initial appointment as a supervisor or manager becomes final." It also says that a supervisor or manager "who does not satisfactorily complete the probationary period . . . shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned or promoted." This subpart contains OPM regulations implementing those requirements of law.

§ 315.902 Definitions.

In this subpart "supervisory position" and "managerial position" have the meaning given them by Chapter 315, Subchapter 9 of the Federal Personnel Manual.

§ 315.903 Coverage.

This subpart applies to appointments and positions without time limitation in the competitive civil service. Agencies may, at their option, apply these provisions to time-limited appointments and positions. This subpart does not apply to appointments or positions in the Senior Executive Service.

§ 315.904 Basic requirement.

(a) An employee is required to serve a probationary period prescribed by the agency upon initial appointment to a supervisory and/or managerial position.

(b) An employee is required to complete a single probationary period in a supervisory position and a single probationary period in a managerial position, regardless of the number of agencies, occupations, or positions in which the employee serves. However, an agency may by regulation provide for exceptions to the probationary period for managers who have satisfactorily completed a probationary period for supervisors when justified on the basis of performance and experience.

(c) Employees who, as of the date this requirement is effective, are serving or have served in Federal civilian supervisory or managerial positions without time limitation, or in time-limited supervisory or managerial positions under an official assignment exceeding 120 days, are exempt from its provisions, except that supervisors who are assigned to managerial positions may, according to agency regulations, be required to serve a probationary period for managers.

§ 315.905 Length of the probationary period.

The authority to determine the length of the probationary period is delegated to the head of each agency, provided that it be of reasonable fixed duration, appropriate to the position, and uniformly applied. An agency may establish different probationary periods for different occupations or a single one for all agency employees.

§ 315.906 Crediting service toward completion of the probationary period.

(a) An employee who is reassigned, transferred, or promoted to another supervisory or managerial position while serving a probationary period under this subpart is subject to the probationary period prescribed for the new position. Service in the former position counts toward completion of the probationary period in the new position. If the former position was supervisory and the new position managerial, service counts in the manner prescribed by agency regulation.

(b) The conditions under which prior service is otherwise counted toward completion of the probationary period will be published in the Federal Personnel Manual.

§ 315.907 Failure to complete the probationary period.

(a) Satisfactory completion of the prescribed probationary period is a prerequisite to continued service in the position. An employee who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned, except as provided in paragraph (b) of this section, to a position in the agency of no lower grade and pay than the one the employee left to accept the supervisory or managerial position.

(b) A nonsupervisory or nonmanagerial employee who is demoted into a position in which probation under § 315.904 is required and who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned to a position at the same grade and pay as the position in which he or she was serving probation. The employee is eligible for repromotion in accordance with Federal Personnel Manual Chapter 335, Promotion and Internal Placement.

(c) The agency must notify the employee in writing that he or she is being assigned in accordance with this section.

[49 FR 39287, Oct. 5, 1984]

§ 315.908 Appeals.

(a) An employee who, in accordance with the provisions of this subpart, is assigned to a nonmanagerial or nonsupervisory position, has no appeal right.

(b) An employee who alleges that an agency action under this subpart was based on partisan political affiliation or marital status, may appeal to the Merit Systems Protection Board.

§ 315.909 Relationship to other actions.

(a) If an employee is required to concurrently serve both a probationary period under this subpart and a probationary period under Subpart H of this part, the latter takes precedence and completion of the probationary period for competitive appointment and fulfills the requirements of this subpart.

(b) An action which demotes an employee to a lower grade than the one the employee left to accept the supervisory or managerial position, and an action against an employee for reasons other than supervisory or managerial performance, is governed by Part 432 or Part 752 procedures, whichever is applicable. If the employee believes an action under this subpart was based on improper discrimination or other prohibited practices under 5 U.S.C. 2302, he or she may appeal to the Merit Systems Protection Board or the Equal Employment Opportunity Commission, as appropriate.

PART 316—TEMPORARY AND TERM EMPLOYMENT

Subpart A—[Reserved]

Subpart B—TAPER Employment

Sec.

316.201 Purpose and duration.
316.202 Eligibility of TAPER employees for within-grade increases.

Subpart C—Term Employment

316.301 Purpose and duration.
316.302 Selection of term employees.
316.303 Tenure of term employees.
316.304 Trial period.
316.305 Eligibility for within-grade increases.

Subpart D—Temporary Limited Employment

316.401 Purpose and duration.
316.402 Authorities for temporary appointments.

Subpart E—[Reserved]

Subpart F—Appointment Without Competitive Examination in Rare Cases

316.601 Appointment without competitive examination in rare cases.

Subpart G—Retention of Incumbents of Positions Brought Into the Competitive Service

316.701 Public or private enterprise taken over by Government.
316.702 Excepted positions brought into the competitive service.
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Subpart H—Separation of Temporary and Term Employees

316.801 Displacement of temporary and term employees.

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted.

SOURCE: 33 FR 12423, Sept. 4, 1968, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—TAPER Employment

§ 316.201 Purpose and duration.

OPM may authorize an agency to fill a vacancy by a temporary appointment pending establishment of a register (TAPER appointment) when there are insufficient eligibles on a register appropriate for filling the vacancy in a position that will last for a period of more than 1 year and the public interest requires that the vacancy be filled before eligibles can be certified.

[38 FR 15617, June 14, 1973]

§ 316.202 Eligibility of TAPER employees for within-grade increases.

A TAPER employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

Subpart C—Term Employment

§ 316.301 Purpose and duration.

An agency may make a term appointment for a period of more than 1 year, in accordance with conditions published in the Federal Personnel Manual, when the needs of the service so require and the employment need is for a limited period of 4 years or less.

[43 FR 34429, Aug. 4, 1978]

§ 316.302 Selection of term employees.

(a) Except as provided in paragraphs (b) and (c) of this section, when making a term appointment an agency shall select an eligible from a register.

(b) The Office may authorize an agency to make term appointments outside a register when there are insufficient eligibles on the appropriate register.

(c) An agency may give a term appointment without regard to the existence of an appropriate register to:

(1) A person with eligibility for reinstatement;

(2) A veteran, as defined in section 2011(2)(A) of title 38, United States Code, who:

(i) Served on active duty in the Armed Forces of the United States between August 5, 1964 and May 7, 1975;

(ii) Completed no more than 14 years of education, unless compensably disabled or discharged because of service-connected disabilities, in which case the 14-year educational requirement does not apply; and

(iii) Is qualified to perform the duties of the position. An appointment under this paragraph may be made only to a position at GS-9 or below, or equivalent in another pay system, without time limitation after separation from the military service, but not after September 30, 1986. A veteran who is an applicant for a position at GS-3, or equivalent, and below under this paragraph is deemed qualified to perform the duties of the position on the basis of the veteran's civilian and military service;

(3) A person eligible for career or career-conditional appointment under §§ 315.601, 315.605, 315.606, 315.608, or 315.609 of this chapter;

(4) A former term employee of the agency who left prior to the expiration of his or her appointment. Reappointment must be to a position covered by the same term authority under which the individual previously served, and service under such reappointment may not exceed the expiration date of the original term appointment;

(5) A disabled veteran who has been retired from active military service with a disability rating of 30 percent or more, or has been rated by the Veterans Administration within the preceding year as having a compensable service-connected disability of 30 percent or more.

(6) A person eligible for acquisition of competitive status for career appointment under section 3304(c) of title 5, United States Code. However, a

term employee does not acquire a competitive status on the basis of this term appointment; nor does this term appointment extend or terminate the employee's eligibility under 5 U.S.C. 3304(c).

(5 U.S.C. 3301, 3302, 3304(c); 38 U.S.C. 2014; E.O. 12362)

[44 FR 44813, July, 31, 1979, as amended at 46 FR 61065, Dec. 15, 1981; 47 FR 27539, June 25, 1982; 49 FR 5601, Feb. 14, 1984; 50 FR 13173, Apr. 3, 1985; 50 FR 42509, Oct. 21, 1985]

§ 316.303 Tenure of term employees.

(a) A term employee does not acquire a competitive status on the basis of his term appointment.

(b) The employment of a term employee ends automatically on the expiration of his term appointment unless he has been separated earlier in accordance with this chapter.

§ 316.304 Trial period.

(a) The first year of service of a term employee is a trial period.

(b) The agency may terminate a term employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

§ 316.305 Eligibility for within-grade increases.

A term employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

Subpart D—Temporary Limited Employment

§ 316.401 Purpose and duration.

OPM may authorize an agency to make a temporary limited appointment to meet an administrative need for temporary employment, such as to fill a temporary position or a continuing position for a temporary period. An agency may make a temporary limited appointment only for a definite period of 1 year or less.

§ 316.402 Authorities for temporary appointments.

(a) *General rule.* An agency may make and extend a temporary limited appointment only with specific authorization from the Office, except under the conditions published by the Office in the Federal Personnel Manual or as provided in paragraph (b) of this section.

(b) *Noncompetitive temporary limited appointments.* An agency may give a temporary limited appointment without regard to the existence of an appropriate register to:

(1) A person with eligibility for reinstatement;

(2) A person eligible for career or career-conditional appointment under §§ 315.601, 315.605, 315.606, 315.607, 315.608, or 315.609 of this chapter;

(3) A former temporary employee of the agency who was originally appointed from a register, subject to the conditions published in the Federal Personnel Manual;

(4) A veteran or disabled veteran as defined in section 2011(2)(A) of title 38, United States Code, who:

(i) Served on active duty in the Armed Forces of the United States between August 5, 1964 and May 7, 1975;

(ii) Completed no more than 14 years of education, unless compensably disabled or discharged because of service-connected disabilities, in which case the 14-year educational requirement does not apply; and

(iii) Is qualified to perform the duties of the position. An appointment under this paragraph may be made only to a position at GS-9 or below, or equivalent in another pay system, without time limitation after separation from the military service, but not after September 30, 1986. A veteran who is an applicant for a position at GS-3, or equivalent, and below under this paragraph is deemed qualified to perform the duties of the position on the basis of the veteran's civilian and military service; or

(5) A disabled veteran who has been retired from active military service with a disability rating of 30 percent or more, or has been rated by the Veterans' Administration within the preceding year as having a compensable

service-connected disability of 30 percent or more.

(6) A person eligible for acquisition of competitive status for career appointment under section 3304(c) of title 5, United States Code. However, a temporary employee does not acquire a competitive status on the basis of this temporary appointment; nor does this temporary appointment extend or terminate the employee's eligibility under 5 U.S.C. 3304(c).

(5 U.S.C. 3312; 22 U.S.C. 2506, 93 Stat. 371, E.O. 12137; 5 U.S.C. 3301, 3302, 3304(c); 38 U.S.C. 2014; E.O. 12362)

[44 FR 44814, July 31, 1979, as amended at 45 FR 43365, June 27, 1980; 46 FR 61965, Dec. 15, 1981; 47 FR 27539, June 25, 1982; 49 FR 5601, Feb. 14, 1984; 50 FR 13173, Apr. 3, 1985; 50 FR 42509, Oct. 21, 1985]

Subpart E—[Reserved]

Subpart F—Appointment Without Competitive Examination in Rare Cases

§ 316.601 Appointment without competitive examination in rare cases.

(a) An agency may make an appointment without competitive examination when:

(1) The duties and compensation of the position are such, or qualified persons are so rare, that in the interest of good civil service administration the position cannot be filled through open competitive examination;

(2) The person to be appointed meets all applicable qualification requirements for the position; and

(3) The appointment is specifically authorized by the Office or is made under an agreement between the agency and the Office providing for such appointments.

(b) A person appointed under paragraph (a) of this section does not acquire a competitive status on the basis of that appointment.

(c) When a position filled under paragraph (a) of this section becomes vacant, the agency may fill the vacancy by another appointment under paragraph (a) of this section only if the conditions of paragraph (a)(3) of this section are again met.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 55132, Sept. 25, 1979]

Subpart G—Retention of Incumbents of Positions Brought Into the Competitive Service

§ 316.701 Public or private enterprise taken over by Government.

(a) When the Office, or an agency acting under an agreement with the Office, finds that the Federal Government has taken over a public or private enterprise, or an identifiable unit thereof, and that a position has thereby been brought into the competitive service, the agency may retain the incumbent of the position.

(b) (1) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a continuing one, the agency shall decide on a timely basis whether it will convert that individual's employment to career or career-conditional under § 315.701 of this chapter.

(2) When an agency decides not to effect conversion under § 315.701 of this chapter, or the employee fails to qualify for conversion, the agency, in its discretion, may retain the employee as a status quo employee.

(c) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a noncontinuing one, the agency shall give the employee a temporary limited appointment under the conditions prescribed by the Office in the Federal Personnel Manual.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 55133, Sept. 25, 1979]

§ 316.702 Excepted positions brought into the competitive service.

(a) When the Office, or an agency acting under an agreement with the Office, finds that an excepted position has been brought into the competitive service by statute, Executive order, or the revocation of an exception under Civil Service Rule VI (§ 6.6 of this chapter), or is otherwise made subject to competitive examination, the agency may retain the incumbent of the position.

(b) (1) When an agency retains an employee under paragraph (a) of this section who was serving in a permanent excepted position under an appointment not limited to 1 year or less, the agency shall decide on a timely basis whether it will convert that employee's appointment to career or career-conditional under § 315.701 of this chapter.

(2) When the agency decides not to effect conversion under § 315.701 of this chapter, or the employee fails to to qualify for conversion, the agency, in its discretion, may retain the employee as a status quo employee.

(c) An employee retained under paragraph (a) of this section who was serving in an excepted position under an appointment limited to 1 year or less is permitted to serve temporarily under the conditions prescribed by the Office in the Federal Personnel Manual.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 55133, Sept. 25, 1979]

§ 316.703 Effect on tenure of position change of status quo employees.

(a) A status quo employee who is promoted, demoted, or reassigned becomes:

(1) An indefinite employee when the position change occurs while he is not serving overseas; or

(2) An overseas limited employee when the position change occurs while he is serving overseas.

(b) An employee referred to in paragraph (a) of this section who is changed back to his status quo position becomes a status quo employee.

Subpart H—Separation of Temporary and Term Employees

§ 316.801 Displacement of temporary and term employees.

(a) An agency shall separate employees serving under the following types of appointments in response to a specific displacement order by OPM or to comply with the provisions of OPM's displaced employee program:

(1) Temporary pending establishment of a register;

(2) Term;

(3) Overseas limited term and overseas limited of indefinite duration; and

(4) Indefinite.

(b) An agency may separate an employee serving under one of the types of appointments named in paragraph (a) of this section in order to create a vacancy for a person who is eligible for placement assistance under Subpart C of Part 330 of this chapter.

(c) When an agency separates employees under this section, it shall follow the order of displacement published by OPM in the Federal Personnel Manual.

[35 FR 413, Jan. 13, 1970, as amended at 41 FR 46866, Oct. 26, 1976]

PART 317—APPOINTMENT, REASSIGNMENT, TRANSFER AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

Subpart A—[Reserved]

Subpart B—General Provisions

Sec.

317.201 Regulatory requirements.

Subpart C—Conversion to the Senior Executive Service

317.301 Conversion coverage.
317.302 Conversion procedures.
317.303 Status of employees who decline voluntary conversion to the Senior Executive Service.
317.304 Conversion of career and career-type appointees.
317.305 Conversion of excepted appointees.
317.306 Conversion of employees under time limited appointments.

Subparts D-E—[Reserved]

Subpart F—Limited Emergency and Limited Term Appointments

317.601 Authorization and duration.
317.602 Conditions of appointment.
317.603 Selection of limited appointees.
317.604 Reassignment of limited appointees.
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Subpart G—SES Career Appointment by Reinstatement

317.701 Agency authority.
317.702 Reinstatement: SES career appointees.
317.703 Guaranteed reinstatement: Presidential appointee.

Sec.

Subpart H—Retention of SES Provisions: Presidential Appointee

317.801 Retention of SES provisions.

AUTHORITY: Section 413(k), Pub. L. 95-454, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 317.201 Regulatory requirements.

This part contains the regulations of the Office of Personnel Management which implement the following provisions of law:

(a) Section 413 of title IV of the Civil Service Reform Act of 1978;

(b) Subchapter VIII of chapter 33 of title 5, U.S.C. on appointment, reassignment, and transfer in the Senior Executive Service; and

(c) Subchapter V of chapter 35 of title 5, U.S.C. on reinstatement to the Senior Executive Service.

[45 FR 8541, Feb. 8, 1980]

Subpart C—Conversion to the Senior Executive Service

SOURCE: 45 FR 8541, Feb. 8, 1980, unless otherwise noted.

§ 317.301 Conversion coverage.

(a) *When applicable.* These conversion provisions apply in the following circumstances.

(1) The implementation of the Senior Executive Service effective on July 13, 1979, and the initial conversions thereto.

(2) The implementation of the Senior Executive Service in an agency following the revocation of that agency's Presidential exclusion under 5 U.S.C. 3132(e). The Office of Personnel Management shall determine the date on which conversions under this authority shall become effective. Generally, this will be no later than six months following the effective date of the revocation of the Presidential exclusion.

(3) The implementation of the Senior Executive Service in a formerly excluded agency following statutory action extending coverage under 5 U.S.C. 3132(a)(1) to that agency. Except as otherwise provided by law, the Office of Personnel Management shall determine the date on which conversions under this authority shall become effective. Generally, this will be no later than six months following the effective date of the statutory action extending coverage under 5 U.S.C. 3132(a)(1).

(4) The exercise of a reemployment right by an individual who at the time of his/her former agency's implementation of the Senior Executive Service was under a reemployment agreement to a position in that agency which meets the grade level and functional criteria for inclusion under the Senior Executive Service. The effective date of a conversion under this authority is prescribed by § 317.302(d)(5).

(b) *Employees covered.* This subpart covers:

(1) An employee serving in a position at the time it is designated a Senior Executive Service position;

(2) An individual appointed or reinstated to a position after it has been designated a Senior Executive Service position;

(3) An employee transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position;

(4) An employee involuntarily reassigned or involuntarily demoted to a position after it has been designated a Senior Executive Service position; and

(5) An employee serving in a position which meets the grade level but not the functional criteria for designation as a Senior Executive Service position.

(6) An employee appointed in his/her former agency under a reemployment right provided, however, that the employee was under a reemployment agreement at the time the Senior Executive Service was implemented in his/her former agency and that the reemployment right was to a position which meets the grade level and functional criteria for inclusion under the Senior Executive Service.

(c) *Employees excluded.* The following employees are excluded from coverage of this subpart and are not entitled to conversion to the Senior Executive Service.

(1) An employee in a position designated as Senior Executive Service who is serving under a time limited appointment which will terminate before the operational date of the Senior Executive Service.

(2) An employee serving under a temporary promotion, detail, or temporary assignment in a position designated as Senior Executive Service unless the position which the employee encumbered on a permanent basis just prior to the current temporary action has been designated as Senior Executive Service.

§ 317.302 Conversion procedures.

(a) *Employees appointed prior to designation; employees involuntarily reassigned or demoted after designation*—(1) *Notice.* Each employee covered by this subpart who was appointed prior to the designation of his/her position as a Senior Executive Service position, or who was involuntarily reassigned or involuntarily demoted to a position after it was designated a Senior Executive Service position, shall be given a written notice which includes the following information:

(i) A statement that the employee's position has been designated as either "general" or "career reserved";

(ii) A statement that the employee is being offered an appointment under the Senior Executive Service or that the employee is not being offered an appointment under the Senior Executive Service but will be separated from the civil service pursuant to § 317.305(b)(4) or § 317.306(b)(4); If the employee is offered conversion, the notice shall also include:

(iii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain in his/her current appointment system;

(iv) Identification of the position, SES pay rate, and kind of appointment which the employee will receive if the employee elects to convert to the Senior Executive Service;

(v) For excepted appointees who have reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), a statement that the employee may request conversion to career appointment;

(vi) For employees under limited executive assignment who have reinstatement eligibility to a position in the competitive service, or as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), and who are covered under § 317.306(b)(3), a statement that the employee may request conversion to career appointment;

(vii) A summary of the features of the Senior Executive Service (this can be accomplished by appending descriptive material prepared by the Office);

(viii) A statement that the employee must submit his/her decision with regard to paragraphs (a)(1)(iii), (v) and (vi) of this section, in writing, on or before the end of the notice period; and

(ix) A statement of the right of an employee who is aggrieved to appeal an action under this subpart to the Merit Systems Protection Board.

An employee whose involuntary reassignment or involuntary demotion to a designated position occurs less than 90 days before the operational date of the Senior Executive Service, shall be given this notice at the time of the personnel action. The employee shall have 90 calendar days from the date of receipt of the notice to make an election on conversion.

(2) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given to an employee upon conversion shall not be less than the employee's basic payable salary just prior to conversion. An employee's payable salary upon conversion is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(3) *Freedom of choice.* The employee shall decide whether he/she accepts conversion to the Senior Executive Service. The employing agency shall not attempt to influence the employee's decision through coercion, intimidation or duress.

(4) *Employee's election.* On or before the end of the notice period, the employee shall signify in writing his/her decision to accept or to decline an appointment under the Senior Executive Service. An excepted or limited assignment employee covered under § 317.305(b)(3) or § 317.306(b)(3), respectively, shall also indicate whether he/she requests conversion to career appointment. Failure to respond shall be deemed a declination.

(b) *Employees receiving appointments after designation but before the operational date of the Senior Executive Service*—(1) *Condition of appointment.* Each individual appointed, reinstated, transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position shall be required to accept conversion to the Senior Executive Service. The agency shall advise the individual of this requirement prior to the appointment or other personnel action. The individual shall signify his/her acceptance of conversion in writing at the time of the personnel action.

(2) *Notice.* At the time of the personnel action, or 90 days before the Senior Executive Service becomes operational, whichever is later, the agency shall give the employee a written notice which identifies the position, SES pay rate, and kind of appointment the employee will receive under the Senior Executive Service.

(3) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given to a Federal employee who enters the Senior Executive Service without a break in service shall not be less than the employee's basic payable salary just prior to his/her entry into the Senior Executive Service. An employee's payable salary under the Senior Executive Service is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(c) *Employees whose positions are not designated Senior Executive Service positions—Notice.* Each employee covered by § 317.301(b)(5) shall be given a written notice advising the employee that his/her position is not designated a Senior Executive Service position; that the employee is not entitled to conversion to the Senior Executive Service; and that the employee has a right to appeal an action under this subpart to the Merit Systems Protection Board.

(d) *Employees appointed under a reemployment right*—(1) *Notice.* At the time the employee exercises his/her reemployment right, the agency shall give the employee a written notice which includes the following information:

(i) A statement that the employee meets the requirements of § 317.301(b)(6) for eligibility for conversion to the Senior Executive Service and that he/she is being offered an appointment under the Senior Executive Service;

(ii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain under the type of appointment upon which the reemployment right was based;

(iii) Identification of the position, SES pay rate, and kind of appointment which the employee will receive if the employee elects to convert to the Senior Executive Service;

(iv) If the reemployment right is to a position in the excepted service and the employee has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, has substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), a statement that the employee may request conversion to career appointment;

(v) A summary of the features of the Senior Executive Service (this can be accomplished by appending descriptive material prepared by the Office); and

(vi) A statment that the employee must submit his/her decision with regard to paragraphs (d)(1)(ii) and (iv) of this section, in writing, on or before the end of the notice period.

(2) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given an employee upon conversion (following exercise of a reemployment right) shall not be less than the basic payable salary to which the employee is entitled upon reemployment under Part 352 of these regulations. An em-

ployee's payable salary upon conversion is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(3) *Freedom of choice.* The employee shall decide whether he/she accepts conversion to the Senior Executive Service. The employing agency shall not attempt to influence the employee's decision through coercion, intimidation or duress.

(4) *Employee's election.* On or before the end of the notice period, the employee shall signify in writing his/her decision to accept or to decline an appointment under the Senior Executive Service. An excepted service employee shall also indicate whether he/she requests conversion to career appointment. Failure to respond shall be deemed a declination.

(5) *Effective date.* A conversion under this section for an employee who elects to join the SES shall become effective at the end of the notice period.

[45 FR 8541, Feb. 8, 1980, as amended at 45 FR 19213, Mar. 25, 1980]

§ 317.303 Status of employees who decline voluntary conversion to the Senior Executive Service.

(a) An employee who declines conversion pursuant to § 317.302(a)(4) or § 317.302(d)(4) shall remain in his/her current appointment and pay system, and shall retain the grade, seniority, and other rights and benefits associated with such type of appointment and pay system. The employee may continue in the current SES position or be reassigned to another position within or outside the Senior Executive Service.

(b) The assignment of an employee who declines conversion under this subpart shall not result in the separation or reduction in grade of any other employee in the agency.

(c) Nothing in these regulations affects an agency's right to terminate a limited executive appointment pursuant to Civil Service Rule IX.

[45 FR 8541, Feb. 8, 1980, as amended at 45 FR 19213, Mar. 25, 1980]

§ 317.304 Conversion of career and career-type appointees.

(a) *Coverage.* This section covers employees serving under:

(1) A career or career-conditional appointment; or

(2) A similar type of appointment ("career-type" appointment) in an excepted service position as determined by the Office. A career-type appointment is an appointment in the excepted service other than an appointment:

(i) To a Schedule C position established under Part 213 of this chapter;

(ii) To a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter;

(iii) To a position which meets the same criteria as a Schedule C position or a position authorized to be filled by non-career executive assignment; or

(iv) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be converted to a Senior Executive Service career appointment. The employee may be assigned to either a "general" or a "career reserved" position.

§ 317.305 Conversion of excepted appointees.

(a) *Coverage.* This section covers employees serving under an excepted appointment in a position:

(1) In Schedule C of Subpart C of Part 213 of Title 5, Code of Federal Regulations;

(2) Filled by noncareer executive assignment under Subpart F of Part 305 of Title 5, Code of Federal Regulations;

(3) In the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code, other than a career Executive Schedule position; or,

(4) Filled under an authority equivalent to paragraph (a) (1), (2), or (3) of this section.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be subject to one of the following actions.

(1) If the employee's position is designated a "general" position, the

agency may convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a "general" position.

(2) If the employee's position is designated a "career reserved" position, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a "general" position. The employee cannot remain in a "career reserved" position.

(3) If the employee subject to § 317.302(a) or § 317.302(d) has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, had substantial career-oriented service under a career-type appointment as defined in § 317.304(a)(2), the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the request is approved by the Office, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a "general" or a "career reserved" position. The name of the individual and basis for approving the request must be published in the FEDERAL REGISTER.

(ii) If the employee's request for conversion to career is not approved by the Office, or if the employee elects not to make such a request, the agency will convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a "general" position.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

§ 317.306 Conversion of employees under time limited appointments.

(a) *Coverage.* This section covers employees serving under:

(1) A limited executive assignment under Subpart E of Part 305 of Title 5, Code of Federal Regulations; or

(2) A similar type of time limited appointment in an excepted service position.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be subject to one of the following actions.

(1) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service limited term appointment.

(2) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will not terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a "general" position.

(3) If the employee under a limited executive assignment has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, had substantial career-oriented service under a career-type appointment as defined in § 317.304(a)(2), and if immediately prior to the limited executive assignment and without a break in service the employee served under a career appointment or career-type appointment in a position now being designated a Senior Executive Service position then the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the employee requests conversion to career, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a "general" or a "career reserved" position. The name of the individual and basis for approving the request must be published in the FEDERAL REGISTER.

(ii) If the employee does not request conversion to career, the agency will convert the employee as provided for in paragraphs (b) (1) and (2) of this section.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

Subparts D–E—[Reserved]

Subpart F—Limited Emergency and Limited Term Appointments

SOURCE: 45 FR 62414, Sept. 19, 1980, unless otherwise noted.

§ 317.601 Authorization and duration.

(a) An agency may make a limited appointment only with the specific authorization of the Office of Personnel Management for use of the appointing authority.

(b) Each use of a limited appointment authority must be approved individually by the Office unless the agency has an agreement with the Office authorizing the agency to make limited appointments on its own under specified circumstances.

(c) The Office may authorize an agency to make a limited emergency appointment not to exceed 18 months to a position established to meet a bona fide, unanticipated, urgent need.

(d) The Office may authorize an agency to make a limited term appointment not to exceed 3 years to a position the duties of which will expire at the end of the period.

§ 317.602 Conditions of appointment.

(a) A limited appointment may be made only to a general position.

(b) A limited appointment is not renewable. If an agency initially made the appointment for less than the maximum period authorized by the Office of Personnel Management, however, the agency may extend the appointment to the maximum period without the approval of the Office. The Office must be notified of the extension.

(c) A limited term or limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of limited term and limited emergency appointments.

§ 317.603 Selection of limited appointees.

An agency may make a limited appointment without the use of merit staffing procedures. The appointee, however, must meet the qualifications requirements for the position, as determined in writing by the appointing authority.

§ 317.604 Reassignment of limited appointees.

An agency may make the following reassignments of limited appointees to positions for which qualified without the prior approval of the Office of Personnel Management. The Office must be notified of the reassignment, however.

(a) An agency may reassign a limited emergency appointee to another general position established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 18 months.

(b) An agency may reassign a limited term appointee to another general position the duties of which will expire at the end of 3 years or less except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

§ 317.605 Tenure of appointees.

(a) A limited appointee does not acquire status within the Senior Executive Service on the basis of the limited appointment.

(b) An agency may terminate a limited appointment at any time.

(c) The employment of a limited appointee ends automatically on the expiration of the appointment if the appointment has not been terminated earlier.

(d) An employee: (1) Who received a limited appointment without a break of service in the same agency as the one in which the employee held a career or career conditional appointment (or an appointment of equivalent tenure) in a permanent civil service position outside the Senior Executive Service, and

(2) Whose limited appointment is terminated for reasons other than misconduct, neglect of duty, or malfeasance, shall be entitled to be placed in

his/her former position or a position of like status, tenure, and grade.

Subpart G—SES Career Appointment by Reinstatement

Authority: 5 U.S.C. 3593 and 3595.

Source: 45 FR 80468, Dec. 5, 1980, unless otherwise noted.

§ 317.701 Agency authority.

As provided for in §§ 317.702 and 317.703, an agency may reinstate a former SES career appointee without regard to the merit staffing requirements established by the Office under 5 U.S.C. 3393(b).

§ 317.702 Reinstatement: SES career appointees.

(a) *Eligibility for reinstatement.* A former SES career appointee who meets the following conditions is eligible for reinstatement:

(1) The individual completed an SES probationary period under his/her last SES career appointment or was exempted from that requirement; and

(2) The individual's separation from his/her last SES career appointment was *not* a removal subject to Subpart E of Part 359 or Subpart F of Part 752 of this chapter, a removal subject to 5 U.S.C. 1206 or 7532, or a resignation in lieu of removal under these sections of law and regulation.

(b) *Applying for reinstatement; time limit.* Application for reinstatement under this section shall be made directly to the agency in which SES employment is sought. There is no time limit for reinstatement under this section.

(c) *Qualifications.* The individual must meet the qualification requirements of the position to which reinstated. The agency makes this determination.

(d) *Tenure upon reinstatement.* An individual who is reinstated under this section becomes an SES career appointee.

§ 317.703 Guaranteed Reinstatement: Presidential appointee.

(a) *Eligibility for reinstatement.* A former SES career appointee who was appointed by the President to a civil service position outside the Senior Executive Service without a break in service and who left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance, is entitled by law to be reinstated.

(b) *Applying for reinstatement; time limit.* Application for reinstatement under this section must be made to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

(c) *Directing reinstatement.* (1) The Office shall use the following order of precedence in directing the reinstatement of a former Presidential appointee:

(i) The agency in which the individual last served as an SES career appointee before accepting the Presidential appointment;

(ii) The successor agency to the one in which the individual last served as an SES career appointee; or

(iii) The agency or agencies in which the individual served as a Presidential appointee.

(2) If it is not possible to place the individual in one of the above agencies, the Office shall direct reinstatement to another agency in the Executive branch with positions under the Senior Executive Service.

(3) The agency being directed to take the reinstatement action shall be responsible for assigning the individual to a position for which he/she meets the qualifications requirements.

(4) When directing the reinstatement of a Presidential appointee, the Office may, as appropriate, allocate an additional SES space authority to the agency.

(d) *Tenure upon reinstatement.* (1) An individual who is reinstated under this section becomes an SES career appointee.

(2) An individual who was serving an SES probationary period at the time of his/her Presidential appointment is required to complete the 1-year SES probationary period upon reinstatement.

(e) *Compliance.* (1) An agency must comply with an order to reinstate issued by the Office under this section as promptly as possible but not more than 30 calendar days from the date of the order.

(2) An individual who declines an offer of reinstatement ordered by the Office shall not be entitled to further placement assistance by the Office under this section.

Subpart H—Retention of SES Provisions: Presidential Appointee

§ 317.801 Retention of SES provisions.

(a) *Coverage.* This subpart applies to a career appointee in the SES appointed by the President to a civilian position in the executive branch with the advice and consent of the Senate at a rate of basic pay which is equal to or greater than the rate payable for Executive Level V.

(b) *Retention of provisions.* At the time of appointment, an appointee covered by paragraph (a) of this section may elect to retain some, all, or none of the following SES provisions: basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement. That election shall remain in effect for no less than one year, unless the appointee leaves the position sooner.

(c) *Change in election.* Except as provided by paragraph (b) of this section, a career appointee is permitted to make an election for purposes of adding or dropping coverage no more than once during any twelve-month period.

(5 U.S.C. 3392 and 3397)

[50 FR 6154, Feb. 14, 1985]

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

NOMENCLATURE CHANGE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subpart A—Discretion in Filling Vacancies

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330.101 Methods of filling vacancies.
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330.501 General restriction on movement after competitive appointment.
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Subpart F—Prohibited Practices

330.601 Withdrawal from competition.

Subpart G—Placement Program for Nonstatus Individuals Receiving Compensation for Work Injuries and for Certain Disability Annuitants

330.701 Coverage.
330.702 Placement assistance.

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330.801 Coverage.
330.802 OPM assistance.
330.803 Priority referral.
330.804 Department of Defense responsibility for placement assistance.

Sec.
330.805 Duration of eligibility for assistance.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted.

SOURCE: 33 FR 12425, Sept. 4, 1968, unless otherwise noted.

Subpart A—Discretion in Filling Vacancies

§ 330.101 Methods of filling vacancies.

An appointing officer may fill a position in the competitive service by any of the methods authorized in this chapter. He shall exercise his discretion in each personnel action solely on the basis of merit and fitness and without the discrimination prohibited in Part 713 of this chapter.

§ 330.102 Notification of vacancies to State Job Service and Office of Personnel Management.

Federal agencies (as defined in 5 USC 5102(a)(1)) must notify State Job Service offices and the Office of Personnel Management of vacant positions in the competitive service which they intend to fill from outside the Federal service, other than through competitive examinations or hiring a person who is eligible for career service entry without competitive examination. Such notification must indicate the period during which applications will be accepted.

(5 U.S.C. 3327)

[44 FR 49641, Aug. 24, 1979]

Subpart B—Appointment From Reemployment Priority List

§ 330.201 Priority in filling vacancies.

(a) When a qualified person is available on the agency's reemployment priority list, the agency may not fill a competitive position by:

(1) A new appointment, unless the person appointed in a qualified 10-point preference eligible;

(2) Transfer; or,

(3) Reemployment of a person not on the reemployment priority list unless the person is a preference eligible or is restored under Part 353 of this chapter.

(b) Paragraph (a) of this section does not apply when all qualified persons on the reemployment priority list decline or fail to respond to offers of reemployment.

(c) In selection from a reemployment priority list, an agency shall give preference to tenure group I employees over tenure group II employees, and to qualified preference eligibles over nonpreference eligibles within each tenure group. An appointing officer may select persons in a subgroup without regard to order of retention standing within the subgroup.

(d) An agency may make an exception to this section and appoint a person not on the reemployment priority list or a person on the list with lower standing than others on the list only when it is necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by a person on the list or a person on the list with higher standing than the person appointed. The agency shall notify each person adversely affected by an appointment under this paragraph of the reasons for the exception and of this right of appeal to Merit Systems Protection Board.

(e) An agency's reemployment list shall consist of:

(1) Former employees in the competitive service in tenure groups I or II who were separated under Part 351 of this chapter; and

(2) Former employees in the competitive service in tenure groups I or II who have fully recovered from a compensable injury (as defined in subchapter I of chapter 81 of title 5, United States Code) more than 1 year after they began receiving compensation and who apply for reappointment within 30 days of the date of cessation of compensation.

(f) (1) In selection from a reemployment priority list, an agency considers full-time employees only for full-time positions, and other-than-full-time employees only for other-than-full-time positions, except as provided in paragraph (f) (2) of this section.

(2) An agency, at its discretion, may adopt administrative provisions to con-

sider employees for selection from a reemployment priority list under the following conditions:

(i) Full-time employees may be considered for other-than-full-time positions if there are no other-than-full-time employees on the reemployment priority list who are qualified and available; and

(ii) Other-than-full-time employees may be considered for full-time positions if there are no full-time employees on the reemployment priority list who are qualified and available.

(g) Subpart J of Part 351 of this title covers the establishment and maintenance of the reemployment priority list.

(5 U.S.C. 3315)

[33 FR 12425, Sept. 4, 1968, as amended at 40 FR 23836, June 3, 1975; 43 FR 2378, Jan. 17, 1978; 43 FR 6205, Feb. 14, 1978; 45 FR 85653, Dec. 30, 1980]

§ 330.202 Reemployment priority list appeals.

An employee or former employee who thinks his or her reemployment priority rights under this subpart have been violated is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations by presenting factual information that he or she was denied restoration rights because of the employment of another person.

(5 U.S.C. 7701, et seq.)

[44 FR 48952, Aug. 21, 1979]

Subpart C—Displaced Employee Program

Source: 46 FR 55081, Nov. 6, 1981, unless otherwise noted.

§ 330.301 Definition.

In this subpart, "displaced employee" means a present or former career or career-conditional employee, or excepted employee with competitive status and in tenure group I or II (except an employee occupying a Schedule C position as defined in Part 213 of this chapter—Schedule C employees are not entitled to placement assistance under the Displaced Employee Program) as defined in Part 351 of this chapter, who—

(a) Has received a reduction-in-force notice and whose employing agency has determined that he/she cannot be placed in another position in his/her competitive area (as defined in Part 351 of this chapter);

(b) Has declined to transfer with his/her function to another commuting area or to accept a new assignment to another commuting area (as defined in Part 351 of this chapter), and whose employing agency has determined that he/she will not be placed in another position in his/her competitive area—in this instance, an employee would be entitled to assistance under the Displaced Employee Program for positions *only* within his/her current commuting area;

(c) Was separated or furloughed because of a compensable injury sustained under the provisions of subchapter I of chapter 81 of title 5, United States Code; or,

(d) Has been retired under section 8337 of title 5, United States Code.

§ 330.302 Agency programs.

(a) Each agency has a primary obligation to assist, to the maximum extent practicable and in keeping with requirements set forth in (b) of this section, in the placement of its displaced employees. OPM's Displaced Employee Program acts only to supplement these efforts and is not intended to replace an agency's program or to relieve an agency of its responsibility to provide the maximum placement assistance possible.

(b) Each agency is required to operate a positive placement program for its own displaced employees. The program must, at a minimum, provide for establishment and maintenance of a reemployment priority list for the commuting area, as provided for in Subpart B of Part 330 and Subpart J of Part 351 of this chapter. Additionally, each agency is strongly encouraged to supplement this basic requirement with other forms of appropriate assistance. An agency's positive placement program should include, at a minimum, the following elements:

(1) who is eligible for assistance,

(2) the duration of eligibility,

(3) the types of assistance provided, including counseling, job referral, and training,

(4) referral procedures, including interagency referrals, and

(5) consideration of the appropriateness of placing restrictions on filling vacancies by any means when qualified displaced persons are available.

§ 330.303 OPM program.

Subject to the guidelines published by OPM in the Federal Personnel Manual, a displaced employee is eligible for placement assistance under OPM's Displaced Employee Program.

§ 330.304 Priority referral.

(a) *When made.* OPM and agencies with delegated examining authority refer displaced employees for consideration in filling positions at GS-15 and below, or the equivalent, which (1) are expected to last more than 1 year, (2) are at or below the grade of the positions from which the employees were or will be displaced, and (3) are either vacant or filled by tenure group III employees as defined in Part 351 of this chapter other than status quo employees (as defined in Part 210 of this chapter). Referrals are based on the qualifications of displaced employees and on the duties of the positions.

(b) *Selections.* When an agency selects a referred displaced employee, it employs him/her by reinstatement, transfer, position change, or new appointment as appropriate.

§ 330.305 Restrictions.

(a) When a displaced employee receives priority referral under § 330.304(a) to a position for which he/she is qualified and available, the agency shall give him/her bona fide consideration for placement in the position. If there is no vacancy, but there is a position occupied by a tenure group III employee, other than a status quo employee, the agency shall establish a vacancy by separating a tenure group III employee under § 316.801 of this part.

(b) OPM or agencies with delegated examining authority will neither certify from a register of eligibles nor authorize appointment outside the register in the absence of eligibles to fill any position expected to last more than 1 year for which a displaced employee is eligible and available for priority referral.

§ 330.306 Duration of eligibility.

A tenure group I displaced employee is eligible for placement assistance under the Displaced Employee Program for 2 years, and a tenure group II employee for 1 year, from the date he/she was separated or from the date he/she entered the program, whichever is later. Eligibility is terminated earlier, however, (a) at the employee's written request; (b) upon his/her acceptance of a nontemporary appointment in either the competitive or excepted service; or, (c) upon his/her declination of employment in the competitive or excepted service under conditions (i.e., at any grade, salary level, in any geographic location, or with any work schedule) which he/she previously indicated as acceptable, unless OPM determines that in the interest of equity an exception is warranted.

Subpart D—Positions Restricted to Preference Eligibles

§ 330.401 Competitive examination.

In each entrance examination for the positions of custodian, elevator operator, guard, and messenger (referred to hereinafter in this subpart as restricted positions), OPM shall restrict competition to preference eligibles as long as preference eligibles are available.

(5 U.S.C. 3310)

§ 330.402 Direct recruitment.

In direct recruitment by an agency under delegated authority, the agency shall fill each restricted position by the appointment of a preference eligible as long as preference eligibles are available.

§ 330.403 Noncompetitive actions.

An agency may fill a restricted position by the appointment by noncompetitive action of a nonpreference eligible only in particular types of cases as determined by OPM. OPM shall publish in the Federal Personnel

Manual a statement of the circumstances under which a restricted position may be filled by noncompetitive action.

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

OPM and agencies have certain obligations toward preference eligibles occupying restricted positions when a decision is made to contract out a Government-performed commercial activity in accordance with the Office of Management and Budget (OMB) Circular A-76. Preference eligibles are entitled to additional placement assistance through the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). These preference eligibles must: (a) Be occupying restricted positions as designated in 5 U.S.C. 3310 and § 330.401 of this part, and further defined in the Federal Personnel Manual; (b) be in the competitive service (in tenure group I or II); and (c) meet the eligibility requirements of the IPAP as specified in OPM issuances or the DEP which is described in Subpart C of this part.

[50 FR 39877, Sept. 30, 1985]

§ 330.405 Agency placement assistance.

An agency, compelled to conduct a reduction in force and separate a preference eligible from a restricted position because a Government-performed commercial activity is contracted out, must alert affected preference eligible employees of their placement rights and their opportunity to participate in agency and OPM placement programs. Agencies must make maximum effort to find suitable positions for the preference eligible. This effort must include—

(a) Conducting an internal positive placement program;

(b) Emphasizing selection procedures using reemployment priority lists in accordance with Subpart B of this part and Subpart J of Part 351 for every vacant agency position for which the preference eligible qualifies and is available;

(c) Notifying preference eligibles of the right to register in the IPAP or the DEP at least 60 days before the effective date of separation. Agencies, however, are encouraged to notify employees of their right to placement assistance through the IPAP as soon as they receive approval to convert a restricted position to contract performance.

(d) Assuring that OMB's policy directives on the preference eligibles' right of first refusal for employment openings in contracting out situations are met;

(e) Continuing liaison with State Job Service offices for placement assistance for eligible employees who wish to be considered for jobs outside the Federal Government. This includes cooperation with Local Veteran Employment Representatives (LVER) and Disabled Veterans Outreach Program (DVOP) specialists;

(f) Referring names of interested preference eligibles to the U.S. Postal Service for consideration for employment opportunities.

[50 FR 39877, Sept. 30, 1985]

§ 330.406 OPM placement assistance.

OPM's responsibilities include:

(a) Assisting agencies in operating positive placement programs.

(b) Making priority referral in accordance with § 330.304 of Subpart C of this part.

(c) Assuring that all agencies that have vacancies to fill through the competitive examining process give full consideration to adversely affected preference eligibles registered in the IPAP and DEP.

(d) Encouraging cooperation between local U.S. Postal Service installations and local Federal installations to assist these displaced preference eligibles in applying for U.S. Postal Service positions.

(e) Monitoring this placement assistance through IPAP and DEP procedures.

[50 FR 39877, Sept. 30, 1985]

§ 330.407 Duration of eligibility for assistance.

Adversely affected preference eligibles may remain in the DEP for 6 months after their normal DEP eligibility expires and, upon their request, are entitled to a second 6-month extension. Eligibility may, however, be terminated earlier in accordance with DEP procedures.

[50 FR 39877, Sept. 30, 1985]

Subpart E—Restrictions To Protect Competitive Principles

§ 330.501 General restriction on movement after competitive appointment.

An agency may promote an employee or reassign him to a different line of work, or to a different geographical area, and it may transfer a present employee or reinstate a former employee of the same or another agency to a higher grade or different line of work, or to a different geographical area, only after 3 months have elapsed since the employee's latest nontemporary competitive appointment. OPM may waive the restriction against movement to a different geographical area when it is satisfied that the waiver is consistent with the principles of open competition.

[37 FR 11965, June 16, 1972]

§ 330.502 Additional restrictions relating to time in grade.

In applying the time-in-grade restrictions of Subpart F of Part 300 of this chapter to an employee serving with career or career-conditional tenure acquired through competitive appointment, prior service under nonpermanent appointment at a level above that of his competitive appointment shall be credited as if it had been performed at the level of his competitive appointment.

[34 FR 2649, Feb. 27, 1969]

§ 330.503 Assessment of compliance with competitive principles.

As one factor in assessing an agency's compliance with competitive principles, OPM will consider the relationship between appointments from competitive examinations and subsequent position changes. When OPM finds that an agency has not complied with competitive principles, either in an individual case or on a program basis, OPM will require the agency to take appropriate corrective action.

[37 FR 11965, June 16, 1972]

§ 330.504 Special restrictions after appointment under Part-time Direct Hire Program.

(a) A person hired under the Part-time Direct Hire Program may not be changed to full time through:

(1) Position change;

(2) Work schedule change;

(3) Transfer; or

(4) Reinstatement based on appointment under the Part-time Direct Hire Program until he or she has completed at least 1 calendar year of service in a part-time position under the program.

(b) In the event of a break in service, the service requirement in paragraph (a) of this section is computed on the basis of the employee's total time in a pay status, 365 days equaling 1 calendar year.

(c) Agencies may waive this restriction only in the event of extreme personal hardship to the employee.

[45 FR 65493, Oct. 3, 1980]

§ 330.505 Nonapplicability to persons within reach on registers.

The restrictions in this subpart do not apply to a person who is within reach on a register for competitive appointment to the position to be filled.

[34 FR 2649, Feb. 27, 1969]

Subpart F—Prohibited Practices

§ 330.601 Withdrawal from competition.

An applicant for competitive examination, an eligible on a register, and an officer or employee in the executive branch of the Government shall not persuade, induce, or coerce, or attempt to persuade, induce, or coerce, directly or indirectly, a prospective applicant to withhold filing application, or an applicant or eligible to withdraw from competition or eligibility, for a position in the competitive service, for the purpose of improving or injuring the prospects of an applicant or eligible for appointment. OPM shall cancel the application or eligibility of an applicant or eligible who violates this section, and shall impose such other penalty as it considers appropriate.

Subpart G—Placement Program for Nonstatus Individuals Receiving Compensation for Work Injuries and for Certain Disability Annuitants

§ 330.701 Coverage.

This subpart applies to each present or former employee who is not eligible for assistance under Subpart C of this part and who—

(a) Was separated or furloughed because of a compensable injury sustained under the provisions of subchapter I of chapter 81 of title 5, United States Code; or

(b) Is under 60 years of age, has been retired under section 8337 of title 5, United States Code, and is subsequently found by OPM to have recovered from his disability or to have been restored to earning capacity.

[40 FR 23836, June 3, 1975]

§ 330.702 Placement assistance.

Subject to the conditions published by OPM in the Federal Personnel Manual, an employee covered by this subpart may apply for examination by OPM for any position for which there is a register established or about to be established under open competitive examination. OPM enters the names of employees applying under this section on the appropriate registers in the order provided in § 332.401 of this chapter.

[35 FR 413, Jan. 13, 1970]

Subpart H—Placement Assistance for National Guard Technicians Who Become Entitled to a Disability Annuity

AUTHORITY: 5 U.S.C. 3301, 3302, 8337(L), unless otherwise noted.

SOURCE: 48 FR 39210, Aug. 30, 1983, unless otherwise noted.

§ 330.801 Coverage.

This subpart applies to current or former National Guard Technicians who—

(a) Are or were separated from such positions on or after December 31, 1979, because of a medical disability that disqualified them from membership in the National Guard or from holding the military grade required for such employment;

(b) Have not been found by OPM to be disabled under subchapter III of chapter 83 of title 5, United States Code, section 8337(a);

(c) Have applied for or are receiving an annuity under the provisions of subchapter III of chapter 83 of title 5, United States Code, section 8337(h); and,

(d) Are not eligible for assistance under Subpart C of this part.

§ 330.802 OPM assistance.

An employee covered by this subpart is subject to mandatory enrollment in an OPM placement assistance program. Such an employee shall receive priority consideration for vacant positions in the Federal Government in accordance with the provisions of § 330.803 of these regulations.

§ 330.803 Priority referral.

(a) An employee covered by this subpart shall be referred, both by OPM and agencies with delegated examining authority, and considered by any agency of the Government for any vacant position at GS-15 and below or the equivalent whenever—

(1) An agency plans to seek or is seeking the names of qualified candidates from a register or registers of competitive eligibles maintained by OPM or agencies with delegated examining authority;

(2) The position is expected to last more than one year;

(3) The position is located within the commuting area of the employee's former National Guard Technician position;

(4) The position is at the same grade or equivalent level as the National Guard Technician position from which the employee was separated; and,

(5) The employee is qualified for the vacant position as determined by the head of the agency or his/her designee.

In addition, OPM and agencies with delegated examining authority will refer the names of employees covered by this subpart whenever an agency requests recruiting assistance for positions in the excepted service.

(b) When an agency selects an individual referred under this subpart, it will generally employ him or her under authority of Part 213, Subpart C, § 213.3102(j) of the excepted service or other appropriate excepted service appointing authorities.

§ 330.804 Department of Defense responsibility for placement assistance.

(a) The Department of Defense shall, as the Government agency employing National Guard Technicians and in accordance with its own personnel management policies and practices, ensure that employees covered by this subpart receive appropriate consideration as defined by the Department of Defense for positions within the military departments and defense agencies for which the head of that department or agency, or his/her designee, determines that the individual is qualified, which is in the same commuting area and which is at the same grade or equivalent level as the National Guard Technician position from which the employee was separated.

(b) The Department of Defense will be notified by OPM whenever a National Guard Technician who was separated on or after December 31, 1979, and before October 1, 1982, from such a position of a medical disability that disqualified him/her from membership in the National Guard or from holding the military grade required for such employment has filed a timely application for disability annuity under 5 U.S.C. 8337(h). The department shall, in turn, take steps to provide appropriate internal placement consideration to such individuals beginning on the day following the date that such notification from OPM has been received by the department. Further, the department or its appropriate component will be responsible for enrolling such individuals into OPM's placement assistance program as soon as is reasonably possible, with the expectation that, in most cases, enrollment can be made within 30 calendar days following the date that the department has been notified by OPM that a timely application for a disability annuity under 5 U.S.C. 8337(h) has been filed by the former National Guard Technician.

(c) For National Guard Technicians who are separated on or after October 1, 1982, because of a medical disability that disqualified him/her from membership in the National Guard or from holding the military grade required for such employment, internal Department of Defense placement consideration shall begin as soon as the determination has been made by the department or its appropriate component that the technician is no longer qualified for membership in the National Guard and shall continue after the date of actual separation from the National Guard Technician position in accordance with paragraph (a) of this section. The Department of Defense or its appropriate component will also be responsible for enrolling such individuals into OPM's placement assistance program as soon as is reasonably possible, with the expectation that, in most cases, enrollment can be made within 15 calendar days following the actual date of separation from the National Guard Technician position.

§ 330.805 Duration of eligibility for assistance.

(a) An employee covered by this subpart is eligible for OPM placement assistance without time limit. Eligibility will, however, be terminated upon—

(1) His/her reemployment by a Federal department or agency in a nontemporary position;

(2) His/her declination of any position in the Government for which he/she has been found qualified by the head of the agency or his/her designee, and which is at the same grade or equivalent level, in the same commuting area and with at least the same tenure and work schedule as the former National Guard Technician position;

(3) His/her restoration to earning capacity as determined by OPM pursuant to the terms of section 8337 of title 5, United States Code; or,

(4) Any other circumstance which terminates his/her eligibility for an annuity under section 8337(h)(1) of title 5, United States Code.

(b) When an agency appoints a former National Guard Technician who has applied for or is receiving an annuity under section 8337(h) of title 5, United States Code, *or* when an agency makes an offer of a position which conforms to the requirements of paragraph (a)(2) of this section and the offer is declined, the agency shall notify OPM of such an appointment or declination. This notification shall include the date of the appointment or declination and, if an appointment, the title, pay plan, series, grade, and rate of pay of the position.

PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

Subpart A—General Provisions

Sec.
332.101 General policy of competition.
332.102 Definitions.
332.103 Filling certain postmaster positions.

Subpart B—[Reserved]

Subpart C—Period of Competition and Eligibility

GENERAL

332.301 Termination of eligibility.

ACCEPTANCE OF APPLICATIONS AFTER CLOSING DATE OF EXAMINATIONS

332.311 Quarterly examinations.
332.312 Applicants in military or overseas service.
Sec.
332.313 Preference eligibles separated from competitive positions.
332.314 Displaced employees eligible for placement assistance.

RESTORATION OF ELIGIBILITY

332.321 Preference eligibles who resigned from competitive positions.
332.322 Persons who lost eligibility because of military service.
332.323 Employees separated during probation.

Subpart D—Consideration for Appointment

332.401 Order on registers.
332.402 Regular order of certification for appointment.
332.403 Selective certification.
332.404 Order of selection from certificates.
332.405 Three considerations for appointment.
332.406 Objections to eligibles.
332.407 Restriction of consideration to one sex.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted.

SOURCE: 33 FR 12426, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 332.101 General policy of competition.

(a) Examinations for entrance into the competitive service shall be open competitive, except that OPM may authorize noncompetitive examinations when sufficient competent persons do not compete.

(b) An examination for promotion, demotion, reassignment, transfer, or reinstatement may be a noncompetitive examination.

§ 332.102 Definitions.

In this part:

(a) "Certificate" means a list of eligibles from a register submitted to an appointing officer so that he may consider the eligibles for appointment.

(b) "Active military duty" means active duty in full pay status in the Armed Forces of the United States, including an initial period of active duty for training.

§ 332.103 Filling certain postmaster positions.

(a) When a vacancy occurs or is about to occur in a postmaster position in a fourth-class post office and the position involves fewer than 7 daily hours of service, a representative of the U.S. Postal Service shall visit the locality and, after due public notice has been given, accept applications from interested persons. The representative shall establish a register based on the qualifications and suitability of each applicant and on his ability to provide proper facilities for transacting the business of the office. The U.S. Postal Service shall submit to OPM for postaudit one copy of the representative's report showing the qualifications of all applicants, the basis for ranking the eligibles, and the selection of an eligible from the register. The report shall be accompanied by the applications of all applicants. A person selected for appointment from such a register may be appointed after the date the postmaster position is determined to involve 7 or more daily hours of service only with the prior approval of OPM.

(b) When making an appointment from a register established under paragraph (a) of this section, the appointing officer shall select an eligible in accordance with §§ 332.404 through 332.407.

(c) When OPM, after holding two examinations, is unable to secure a complete certificate of three eligibles for a postmaster position involving 7 or more daily hours of service, it may authorize the establishment of a register and selection therefrom in accordance with paragraphs (a) and (b) of this section.

[34 FR 19748, Dec. 17, 1969]

Subpart B—[Reserved]

Subpart C—Period of Competition and Eligibility

GENERAL

§ 332.301 Termination of eligibility.

(a) Except as provided in paragraph (b) of this section, a person's eligibility on a register is terminated when:

(1) He accepts a career or career-conditional appointment from the register; or

(2) OPM terminates the eligibility of all persons on the register.

(b) OPM may determine that in particular types of cases eligibility may not be terminated in less than 1 year. OPM shall publish in the Federal Personnel Manual the conditions under which eligibility may not be terminated in less than 1 year.

ACCEPTANCE OF APPLICATIONS AFTER CLOSING DATE OF EXAMINATIONS

§ 332.311 Quarterly examinations.

(a) A 10-point preference eligible is entitled to file an application at any time for an examination for any position for which OPM maintains a register, for which a register is about to be established, or for which a nontemporary appointment was made in the preceding three years. For the purposes of this paragraph OPM shall hold an examination not later than the quarterly period succeeding that in which the application is filed.

(b) When there is no appropriate existing register, OPM may establish special registers containing the names of eligibles from the quarterly examinations authorized by paragraph (a) of this section, together with the names of eligibles described in § 332.322, and use these registers for certification to fill appropriate vacancies.

[35 FR 414, Jan. 13, 1970, as amended at 41 FR 22549, June 4, 1976]

§ 332.312 Applicants in military or overseas service.

Subject to the time limits and other conditions published by OPM in the Federal Personnel Manual, the following persons are entitled to file applications for open competitive examinations after the closing date for receipt of applications when there is an existing register or a register about to be established:

(a) A person who could not file an application during the filing period, or appear for an assembled examination, because of military service, or hospitalization continuing for 1 year or less following discharge from military service;

(b) An employee of the Federal Government who, as a member of a reserve unit of the military service, could not file an application during the filing period, or appear for an assembled examination, because of active duty beyond 15 days with the military service even though the duty is designated for training purposes; and

(c) A United States citizen who could not file an application during the filing period, or appear for an assembled examination, because of overseas service with a Federal agency or with an international organization in which the United States Government participates.

§ 332.313 Preference eligibles separated from competitive positions.

The following persons are entitled to have their names entered on an appropriate existing register in the order prescribed by § 332.401 if they were last employed under career or career-conditional appointments:

(a) A preference eligible who is declared eligible therefor after appeal from furlough or discharge; and

(b) A preference eligible who has been furloughed or separated without delinquency or misconduct and who applies within 90 days after furlough or separation.

§ 332.314 Displaced employees eligible for placement assistance.

Subject to the time limits and other conditions published by OPM in the Federal Personnel Manual, a person who is eligible for placement assistance under Subpart C of Part 330 of this chapter is entitled to have his name entered on an appropriate existing register or a register about to be established, in the order prescribed by § 332.401, at each grade or level for which he is qualified and which is above the grade or level of the position from which he was or is to be displaced. His name is entered on the register without restriction as to grade or level if the register is used to fill a position to which OPM does not make priority referrals under § 330.304 of this chapter.

[35 FR 414, Jan. 13, 1970]

RESTORATION OF ELIGIBILITY

§ 332.321 Preference eligibles who resigned from competitive positions.

A qualified preference eligible who resigned without delinquency or misconduct from career or career-conditional employment is entitled to have his name reentered on each register on which his name formerly appeared (or on a successor register) if he applies within 90 days after separation.

§ 332.322 Persons who lost eligibility because of military service.

(a) A person who lost a period of eligibility on a register because he has served on active military duty since June 30, 1950, is entitled to have his name restored to that register or a successor register when he meets the following conditions:

(1) He has not served more than four years following the date of his entrance on active military duty, exclusive of any additional service imposed pursuant to law. The date of entrance on duty means the first date between June 30, 1950, and July 1, 1971, on which he began a new period of active military duty, whether it was by original entry, reentry or extension.

(2) He is honorably separated from active military duty.

(3) He applies for restoration of eligibility within 90 days after discharge from active military duty or from hospitalization continuing for 1 year or less following separation from active military duty.

(4) He is still qualified to perform the duties of the position for which the register is used.

(b) When a person is entitled to have his name restored to a register under paragraph (a) of this section, OPM shall enter his name at the top of the appropriate group on the register if another eligible standing lower on the register on which his name formerly appeared was given a career or career-conditional appointment from that register. For professional and scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities, all eligibles are in one group. For all other positions, preference eligibles with a compensable service-connected disability of 10 percent or more are in one group and all other eligibles in another.

(c) When there is no appropriate existing register, OPM may establish special registers containing the names of persons entitled to priority of certification under paragraph (b) of this section, together with the names of eligibles described in § 332.311, and use these registers for certification to fill appropriate vacancies.

[33 FR 12426, Sept. 4, 1968, as amended at 35 FR 414, Jan. 13, 1970]

§ 332.323 Employees separated during probation.

An employee who is separated (voluntarily or involuntarily) without delinquency or misconduct during his probationary period is entitled to have his name restored to the register of eligibles from which he was appointed, if he applies for restoration while the register is still in use.

Subpart D—Consideration for Appointment

§ 332.401 Order on registers.

Subject to apportionment, residence, and other requirements of law and this chapter, OPM shall enter the names of eligibles on the appropriate register in accordance with their numerical ratings, except that the names of:

(a) Preference eligibles shall be entered in accordance with their augmented ratings and ahead of others having the same rating; and

(b) Preference eligibles who have a compensable service-connected disability of 10 percent or more shall be entered at the top of the register in the order of their ratings unless the register is for professional or scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities.

§ 332.402 Regular order of certification for appointment.

When OPM receives a request for certification of eligibles, it shall prepare a certificate from the top of the appropriate register containing the names of a sufficient number of eligibles to permit the appointing officer to consider three eligibles in connection with each vacancy.

§ 332.403 Selective certification.

When there is no register appropriate as a whole for the certification of eligibles for a particular position, OPM may prepare a certificate from the most nearly appropriate existing register by the selective certification of eligibles qualified for the particular position in the order of their ranking on the register. Special overseas selection factors may also be used as a basis for selective certification from a register used for filling overseas positions. When appropriate, OPM may rerate the eligibles on the register on the basis of the particular requirements of the position.

§ 332.404 Order of selection from certificates.

An appointing officer, with sole regard to merit and fitness, shall select an eligible for:

(a) The first vacancy from the highest three eligibles on the certificate who are available for appointment; and

(b) The second and each succeding vacancy from the highest three eligibles on the certificate who are unselected and available for appointment.

§ 332.405 Three considerations for appointment.

An appointing officer is not required to consider an eligible who has been considered by him for three separate appointments from the same or different certificates for the same position.

§ 332.406 Objections to eligibles.

(a) An appointing officer is not required to consider an eligible to whose certification for the particular position he makes an objection that is sustained by OPM for any of the reasons stated in § 339.101 or § 731.201 of this chapter or for other reasons considered by OPM to be disqualifying for the particular position. OPM may also sustain an objection to certification of an otherwise qualified eligible for an overseas position on the basis of special overseas selection factors.

(b) An appointing officer may not pass over a preference eligible to select a non-preference eligible unless an objection to the preference eligible is sustained by OPM.

(c) Pending OPM action on an agency's objection to an eligible, the agency may not appoint an eligible who would be within reach only if the objection is sustained.

(d) Paragraphs (b) and (c) of this section, do not apply if the agency has more than one position to fill from the same certificate and holds a position for the individual objected to in the event OPM does not sustain the objection

(e) Agencies shall follow the procedures for objecting to an eligible published by OPM in the Federal Personnel Manual.

(5 U.S.C. 3301, 3302, E.O. 10577)

[42 FR 61240, Dec. 2, 1977]

§ 332.407 Restriction of consideration to one sex.

An appointing officer may not restrict his consideration of eligibles or employees for competitive appointment or appointment by noncompetitive action to a position in the competitive service to one sex, except in unusual circumstances when OPM finds the action justified.

[34 FR 5367, Mar. 19, 1969. Redesignated at 42 FR 61240, Dec. 2, 1977]

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

Subpart A—General Provisions

Sec.
333.101 Standards for temporary and term appointments outside the register.
333.102 Preference in temporary and term appointments outside the register.

Subpart A—General Provisions

§ 333.101 Standards for temporary and term appointments outside the register.

Except as OPM may otherwise specify in the Federal Personnel Manual, an agency, in making a temporary or term appointment outside the register, shall determine that the applicant meets the qualification standards issued by OPM and that he is not disqualified for any of the reasons listed in §§ 339.101 and 731.201 of this chapter.

(5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218)

[33 FR 12428, Sept. 4, 1968]

§ 333.102 Preference in temporary and term appointments outside the register.

In making temporary and term appointments outside the register, an agency shall give preference to preference eligibles as follows:

(a) For professional and scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities preference shall be given to preference eligibles without regard to type of preference.

(b) For other positions, preference shall be given first to preference eligibles with compensable service-connected disability of 10 percent or more, and second to other preference eligibles.

(5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218)

[33 FR 12428, Sept. 4, 1968]

PART 334—TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN FEDERAL AGENCIES AND STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER ELIGIBLE ORGANIZATIONS

Sec.
334.101 Purpose.
334.102 Definitions.
334.103 Certification of instrumentalities or authorities of State and local governments and "other organizations".
334.104 Length of assignment.
334.105 Obligated service requirement.
334.106 Requirement for written agreement.
334.107 Termination of agreement.
334.108 Reports required.

AUTHORITY: 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971-1975).

SOURCE: 44 FR 25394, May 1, 1979, unless otherwise noted.

§ 334.101 Purpose.

The purpose of this part is to carry into effect the objectives of title IV of the Intergovernmental Personnel Act of 1970 and title VI of the Civil Service Reform Act which authorize the temporary assignment of employees between Federal agencies and State, local, and Indian tribal governments, institutions of higher education and other eligible organizations.

§ 334.102 Definitions.

In this part: "Assignment" means a period of service under chapter 33, subchapter VI of title 5, United States Code;

"Employee" means an individual serving in a Federal agency under a career or career-conditional appointment including career appointees in the Senior Executive Service, individuals under appointments of equivalent tenure in excepted service positions, and presidential management interns; or an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, institution of higher education, or other eligible organization;

"Federal agency" means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management;

"Institution of higher education" means a domestic, accredited public or private 4-year college or university, or a technical or junior college;

"Indian tribal government" refers to any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 668) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, S. 105);

"Local government" means any political subdivision, instrumentality, or authority of a State or States; and any general or special purpose agency of such a political subdivision, instrumentality, or authority;

"Other organization" means a national, regional, Statewide, areawide, or metropolitan organization representing member State or local governments; an association of State or local public officials; or a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, education, or development services, or related services to governments or universities concerned with public management; and

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and a territory or possession of the United States; and an instrumentality or authority of a State or States; and a Federal-State authority or instrumentality.

§ 334.103 Certification of instrumentalities or authorities of State and local governments and "other organizations".

(a) Organizations interested in participating in the mobility program as an instrumentality or authority of a State or local government or as an "other organization" as set out in this part must have their eligibility certified by the Office of Personnel Management before they will be eligible to enter into a mobility agreement with a Federal agency.

(b) Written requests for certification shall include a copy of the organization's:

(1) Articles of incorporation;

(2) Bylaws;

(3) Internal Revenue Service nonprofit statement; and

(4) Any other information describing the organization's activities as they relate to the public management concerns of governments or universities.

(c) Requests should be mailed to the following address: Assistant Director for Intergovernmental Personnel Programs, Office of Personnel Management, P.O. Box 14184, Washington, DC 20044.

[45 FR 996, Jan. 4, 1980]

§ 334.104 Length of assignment.

(a) An assignment may be made for up to 2 years and may be extended by the head of a Federal agency for up to 2 more years, given the concurrence of the other parties to the agreement.

(b) A Federal agency may not send or receive on assignment an employee who has served under the mobility authority for 4 continuous years without at least a 12-month return to duty with the level of government or the organization from which originally assigned.

(c) Successive assignments without a break of at least 60 calendar days will be regarded as continuous service under the mobility authority.

(d) A Federal agency may not send on assignment an employee who has served on mobility assignments for more than a total of 6 years during his or her Federal career. The Office of Personnel Management may waive this provision upon the written request of the agency head.

[44 FR 25394, May 1, 1979. Redesignated at 45 FR 996, Jan. 4, 1980]

§ 334.105 Obligated service requirement.

A Federal employee assigned under this subchapter must agree as a condition of accepting an assignment to serve with the Federal Government upon the completion of the assignment for a period equal to the length of the assignment.

[44 FR 25394, May 1, 1979. Redesignated at 45 FR 996, Jan. 4, 1980]

§ 334.106 Requirement for written agreement.

(a) Before an assignment is made the Federal agency and the State, local or Indian tribal government, institution of higher education, or other eligible organization and the assigned employee shall enter into a written agreement which records the obligations and responsibilities of the parties as specified in 5 U.S. Code 3373–3375 and in Federal Personnel Manual Chapter 334.

(b) Where the Federal agency pays more than 50 percent of costs of the mobility assignment involving a Federal employee and the period of assignment exceeds 6 months, the agency must document the rationale for the cost-sharing arrangements in the mobility agreement.

(c) Two copies of the original agreement, as well as any modification must be sent to the Office of Personnel Management within 15 days of the date that the assignment or modification becomes effective.

[44 FR 25394, May 1, 1979. Redesignated at 45 FR 996, Jan. 4, 1980]

§ 334.107 Termination of agreement.

(a) An assignment may be terminated at any time at the request of the Federal agency or the State, local, or Indian tribal government, institution of higher education, or other participating organization. Where possible, the party terminating the assignment prior to the agreed upon date should provide 30-days advance notice along with a statement of reasons to the other parties to the agreement.

(b) Federal assignees continue to encumber the positions they occupied prior to assignment, and the position is subject to any personnel actions that might normally occur. At the end of the assignment, the employee must be allowed to resume the duties of his/her position or must be reassigned to another position of like pay and grade.

(c) An assignment is terminated, automatically, when the employer/employee relationship ceases to exist between the assignee and his or her original employer.

(d) The Office of Personnel Management shall have the authority to direct Federal agencies to terminate assignments or take other corrective actions when assignments are found to have been made in violation of the requirements of the Intergovernmental Personnel Act and/or this part.

[44 FR 25394, May 1, 1979. Redesignated and amended at 45 FR 996, Jan. 4, 1980]

§ 334.108 Reports required.

A Federal agency which assigns an employee to or receives an employee from a State, local, or Indian tribal government, institution of higher education or other eligible organization in accordance with this part shall submit to the Office of Personnel Management such reports as the Office of Personnel Management may request.

[44 FR 25394, May 1, 1979. Redesignated at 45 FR 996, Jan. 4, 1980]

PART 335—PROMOTION AND INTERNAL PLACEMENT

Subpart A—General Provisions

Sec.
335.101 Effect of position change on status and tenure.
335.102 Agency authority to promote, demote, or reassign.
335.103 Agency promotion programs.
335.104 Eligibility for career ladder promotion.

AUTHORITY: 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954-1958 Comp. p. 218.

Subpart A—General Provisions

§ 335.101 Effect of position change on status and tenure.

(a) *Status.* A position change authorized by § 335.102 does not change the competitive status of an employee.

(b) *Tenure.* Except as provided in paragraph (c) of this section and § 316.703 of this chapter, a position change authorized by § 335.102 does not change the tenure of an employee.

(c) *Exceptions.* (1) A career-conditional employee who is promoted, demoted, or reassigned to a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis becomes a career employee.

(2) A career employee who is promoted, demoted, or reassigned from a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis to a position under the career-conditional employment system becomes a career-conditional employee unless he has completed the service requirement for career tenure.

[33 FR 12428, Sept. 4, 1968]

§ 335.102 Agency authority to promote, demote, or reassign.

Subject to § 335.103 and, when applicable, to §§ 305.502 and 305.505 of this chapter, an agency may:

(a) Promote, demote, or reassign a career or career-conditional employee or an employee serving under career executive assignment;

(b) Reassign an employee serving under a temporary appointment pending establishment of a register to a position to which his original assignment could have been made by the same appointing officer from the same recruiting list under the same order of consideration;

(c) Promote, demote, or reassign an employee serving under an overseas limited appointment of indefinite duration or an overseas limited term appointment to another position to which an initial appointment under § 301.201, § 301.202, or § 301.203 of this chapter is authorized;

(d) Promote, demote, or reassign (1) a status quo employee and (2) an employee serving under an indefinite appointment in a competitive position, except that this authority may not be used to move an employee:

(i) From a position in which an initial overseas limited appointment is authorized to another position; or

(ii) To a position in which an initial overseas limited appointment is authorized from another position; and

(e) Promote, demote, or reassign a term employee serving on a given project to another position within the project which the agency has been authorized to fill by term appointment;

(f) (1) Except as otherwise specifically authorized by OPM, temporarily promote an employee to meet a temporary need for a definite period of 1 year or less and extend such a promotion for a definite period not to exceed 1 additional year. At the end of the period for which the agency temporarily promoted the employee, or when the agency determines that it no longer needs the employee in the position, the agency shall return the employee to the position from which it temporarily promoted him, except when it reassigns or demotes him, without time limitation and with his consent, to a different position. The return of an employee to the position from which the agency temporarily promoted him under this subparagraph or his reassignment or demotion to a different position that is not at a lower grade or level than the position from which he was temporarily promoted is not subject to Parts 351, 752, 771 or Part 772 [1] of this chapter.

(2) This paragraph applies to a career, career-conditional, status quo, indefinite, or term employee and to an employee serving under a career executive assignment, an overseas limited appointment of indefinite duration, or an overseas limited term appointment.

(g) After entering into a formal agreement with the Office (OPM), promote an employee for a limited term in excess of 2 years but not more than 4 years to complete a designated project, or as part of a planned rotational system for a definite period. Upon the approval of the Office, an agency may extend the period 1 year for a total of 5 years. OPM will consider such requests only on a case-by-case basis.

(1) Upon completion or termination of the assigned project or the termination of the specified rotation period, the agency shall return the employee from the term promotion to the position from which he or she was promoted or to a position of equivalent grade and pay.

(2) The return of an employee to the position from which he or she was promoted to a position of equivalent grade and pay is not subject to Parts 351, 432, 752, and 771, of this chapter. Termination of an employee promoted under this paragraph for any other reason, such as unacceptable performance or misconduct, is covered by the appropriate part of this chapter (Part 432 or 752).

[33 FR 12428, Sept. 4, 1968, as amended at 35 FR 13075, Aug. 18, 1970; 45 FR 24855, Apr. 11, 1980]

§ 335.103 Agency promotion programs.

Except as otherwise specifically authorized by OPM, an agency may make promotions under § 335.102 only to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. The promotion program shall conform with the standards and requirements of OPM.

[38 FR 18445, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

EFFECTIVE DATE: This section is effective upon implementation by an agency or six months after issuance of revised FPM Chapter 335, whichever comes first. For the convenience of the user, the superseded provision appears below.

§ 335.103 Agency promotion programs.

Except as otherwise specifically authorized by OPM, an agency may make promotions under § 335.102 only to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. The promotion program shall conform with the standards and instructions of OPM and shall include:

(a) Guidelines stating how promotion plans are established and operated; and

(b) Plans for the selection of employees for promotion.

§ 335.104 Eligibility for career ladder promotion.

(a) No employee shall receive a career ladder promotion unless his or her most recent summary rating under Part 430 of this chapter is "Fully Successful" or higher. In addition, no employee may receive a career ladder promotion who has a rating below "Fully Successful" on a critical element that is also critical to performance at the next higher grade of the career ladder.

(b) Employees with the highest summary ratings must be given first consideration for career ladder promotions when it is not possible to promote all eligible employees in the same career ladder at the same time.

[48 FR 49478, Oct. 25, 1983]

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[1] Part 772 was removed (see 44 FR 44820, July 31, 1979 and 44 FR 46249, Aug. 7, 1979).

PART 337—EXAMINING SYSTEM

Subpart A—General Provisions

Sec.
337.101 Rating applicants.
337.102 Evaluating qualifications for employees who are in a retained grade.

Subpart A—General Provisions

§ 337.101 Rating applicants.

(a) OPM shall prescribe the relative weights to be given subjects in an examination, and shall assign numerical ratings on a scale of 100. Except as provided in § 930.203(a) of this chapter, each applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination is eligible for appointment.

(b) OPM shall add to the earned numerical ratings of applicants who make a passing grade:

(1) Five points for applicants who are preference eligibles under section 2108(3)(A) and (B) of title 5, United States Code; and

(2) Ten points for applicants who are preference eligibles under section 2108(3)(C)-(G) of that title.

(c) When experience is a factor in determining eligibility, OPM shall credit a preference eligible with:

(1) Time spent in the military service (i) as an extension of time spent in the position in which he was employed immediately before his entrance into the military service, or (ii) on the basis of actual duties performed in the military service, or (iii) as a combination of both methods. OPM shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(2) All valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

(5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218)

[33 FR 12423, Sept. 4, 1968]

§ 337.102 Evaluating qualifications for employees who are in a retained grade.

(a) Employees who are in a retained grade must have the experience they gain subsequent to the downgrading action that placed them in a retained grade considered in the following manner. For placements during the period the employee is in a retained grade, agencies must consider the experience subsequent to the downgrading action to be either:

(1) At the level of the retained grade and in the series of the position which he or she occupied at the time of the downgrading; or

(2) At the grade and in the series of the position to which the employee is downgraded.

(b) Agencies must determine which experience to consider on the basis of which will most likely result in placement. For placements or promotions after the retained grade period, the experience is considered only at the grade level and in the series of the position to which the employee was downgraded.

(5 U.S.C. 5364)

[45 FR 18365, Mar. 21, 1980]

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

Nomenclature Change: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subpart A—Citizenship Requirements

Sec.
338.101 Citizenship.

Subpart B—Members-of-Family Requirement

338.202 Restriction on sons and daughters.

Subparts C-E—[Reserved]

Subpart F—Age Requirements

338.601 Prohibition of maximum-age requirements.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted.

Subpart A—Citizenship Requirements

§ 338.101 Citizenship.

(a) A person may be admitted to competitive examination only if he is a citizen of or owes permanent allegiance to the United States.

(b) A person may be given appointment only if he is a citizen of or owes permanent allegiance to the United States. However, a noncitizen may be given (1) a limited executive assignment under § 305.509 of this chapter in the absence of qualified citizens or (2) an appointment in rare cases under § 316.601 of this chapter, unless the appointment is prohibited by statute.

(c) Paragraph (b) of this section applies to reinstatement and transfer as well as to other noncompetitive appointments, and to conversion to career or career-conditional employment.

[33 FR 12429, Sept. 4, 1968]

Subpart B—Members-of-Family Requirement

§ 338.202 Restriction on sons and daughters.

(a) An agency (including a military department) may appoint the son or daughter of a civilian employee of that agency, or a son or daughter of a member of its uniformed service for student or summer employment within the United States when:

(1) The position is filled from a list of eligibles established under an examination conducted by the Office of Personnel Management and

(2) There is no other available eligible with the same or higher rating, and

(3) The appointment is not prohibited by section 3110 of title 5, United States Code, or Part 310 of this chapter relating to the employment of relatives.

(b) An agency (including a military department) may appoint the son or daughter of a civilian employee of that agency, or the son or daughter of a member of its uniformed service for summer employment within the United States when:

(1) The position is filled under agency-developed staffing plans not requiring a summer written test;

(2) The opportunities for employment have been publicized in the summer announcement, OPM regional and/or area office supplements, or through Federal job information centers and State Employment Services for a minimum 2-week period;

(3) There are no eligibles available with the same or higher rating under merit staffing plans for which the ranking criteria satisfy job-relatedness requirements of FPM Supplement 271-2, "Tests and Other Applicant Appraisal Procedures," or for which ranking is not appropriate and qualified candidates are considered on a strictly random basis; and

(4) The appointment is not prohibited by section 3110 of title 5, United States Code, or Part 310 of this chapter relating to the employment of relatives.

(c) Paragraphs (a) and (b) of this section do not restrict the appointment of persons:

(1) Who are eligible for placement assistance under the OPM's Displaced Employee (DE) Program, or

(2) Who are employed to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or

(3) Who are members of families which are eligible to receive financial assistance under a public welfare program or the total income of which in relation to family size does not exceed limits established by the OPM and published in the Federal Personnel Manual.

(d) An agency (including a military department) may not appoint the son or daughter of a civilian employee of that agency, or the son or daughter of a member of its uniformed service for student employment in programs conducted under the provisions of E.O. 12015 for which noncompetitive conversion is authorized. Exceptions based on difficulty in recruiting for certain occupations may be approved only by OPM.

(e) In this section "summer employment" means any employment beginning after May 12 which will end before October 1 of the same year. "Student employment" means the employment of persons who are enrolled or who have been accepted for enrollment, on a substantially full-time basis, as resident students of a secondary school or of an institution of higher learning; a resident student, for this purpose, is a student in actual physical attendance at a school, as distinguished from a correspondence student.

[44 FR 66573, Nov. 20, 1979]

Subparts C-E—[Reserved]

Subpart F—Age Requirements

§ 338.601 Prohibition of maximum-age requirements.

A maximum-age requirement may not be applied in either competitive or noncompetitive examinations for positions in the competitive service except as provided by:

(a) Section 3307 of title 5, United States Code; or

(b) Pub. L. 93-259 which authorizes OPM to establish a maximum-age requirement after determining that age is an occupational qualification necessary to the performance of the duties of the position.

[40 FR 42734, Sept. 16, 1975]

PART 339—MEDICAL DETERMINATIONS RELATED TO EMPLOYABILITY

Subpart A—General

Sec.
339.101 Purpose.
339.102 Definitions.

Subpart B—Medical Disqualifications

339.201 Medical disqualifications.

Subpart C—Medical Examinations

339.301 Examination authority.
339.302 Examination procedures.
339.303 Payment for examination.
339.304 Records and reports.

AUTHORITY: 5 U.S.C. 3301; E.O. 9830, Feb. 24, 1947.

SOURCE: 49 FR 1328, Jan. 11, 1984, unless otherwise noted.

Subpart A—General

§ 339.101 Purpose.

The applicability of this part to applicants and employees is defined by the specific regulation governing the personnel decision in which the medical issue arises. This part also defines the circumstances under which medical documentation may be acquired and under which examinations and evaluations may be conducted to determine the nature of a medical condition, knowledge of which is necessary to make personnel determinations under any part of this title. Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with all requirements of the appropriate part of this title and provisions of any other title.

§ 339.102 Definitions.

For the purpose of this part:

"Medical condition" means health impairment which results from injury or disease, including psychiatric disease.

"Medical documentation" or "documentation of a medical condition" means a statement which provides the following information, or the parts identified by the agency as necessary and relevant:

(a) The history of the specific medical condition(s), including references to findings from previous examinations, treatment, and responses to treatment;

(b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: findings of physical examination; results of laboratory tests; X-rays; EKG's and other special evaluations or diagnostic procedures; and, in the case of psychiatric disease, the findings of a mental status examination and the results of psychological tests;

(c) Assessment of the current clinical status and plans for future treatment;

(d) Diagnosis;

(e) An estimate of the expected date of full or partial recovery;

(f) An explanation of the impact of the medical condition on life activities both on and off the job;

(g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized;

(h) Narrative explanation of the medical basis for any conclusion which indicates the likelihood that the individual is, or is not, expected to experience sudden or subtle incapacitation as a result of the medical condition;

(i) Narrative explanation of the medical basis for any conclusion that duty restrictions or accommodations are or are not warranted and, if they are, an explanation of their therapeutic or risk avoiding value and the nature of any similar restrictions or accommodations recommended for non-work-related activities; and

(j) Narrative explanation of the medical basis for any conclusion which indicates the likelihood that the individual is, or is not, expected to suffer injury or harm by carrying out, with or without accommodation, the tasks or duties of a position for which he/she is assigned or qualified.

"Medical specialist" means any physician who is board-certified in a medical specialty, or a physicain serving on active duty in the uniformed services who is board-eligible and who is designated by the uniformed service to perform examinations under this part.

"Physician" means a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this part.

"Review of medical documentation" means assessment of medical documentation by, or in coordination with, a physician to ensure that the following criteria are met:

(a) The diagnosis or clinical impression is justified in accordance with established diagnostic criteria; and

(b) The conclusions and recommendations are not inconsistent with generally accepted medical principles and practice.

"Static or well stabilized medical condition" means a medical condition which is not likely to change:

(a) As a consequence of the natural progression of the condition;

(b) Specifically as a result of the normal aging process; or

(c) In response to the work environment or the work itself.

"Subtle incapacitation" means gradual, initially inapparent impairment of physical or mental function which is likely to result in a performance failure, whether reversible or not.

"Sudden incapacitation" means abrupt onset of loss of control of physical or mental function.

Subpart B—Medical Disqualifications

§ 339.201 Medical disqualifications.

Subject to Subpart C of Part 731 of this chapter, OPM may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee by reason of physical or mental unfitness for the position for which he or she has applied to which he or she has been appointed.

Subpart C—Medical Examinations

§ 339.301 Examination authority.

(a) An agency may require an individual who has applied for or occupies a position which has physical/medical standards for selection or retention, or which is part of an established program of medical surveillance related to occupational or environmental exposure or demands, to report for a medical evaluation:

(1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);

(2) On a regularly recurring, periodic basis; and

(3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of the position.

(b) An agency may require an employee receiving workers compensation benefits or assigned to limited duties as a result of an on-the-job injury to report for medical evaluation when the agency has identified an assignment or position (including the employee's regular position) which it reasonably believes the employee can perform consistent with the medical limitations of his/her condition. If the medical information (consistent with generally accepted medical principles and practice) indicates that the employee is capable of performing the duties identified, the agency will promptly return the employee to corresponding duty and pay status.

(c) An agency may require an employee who is released from his/her competitive level in a reduction-in-force to undergo a medical evaluation if the position(s) to which the employee has reassignment rights requires specific physical capacities to perform the duties of the job, and those physical capacities are different from those required in the employee's present position. The agency shall be aware of the affirmative obligations of the provisions of 29 CFR 1613.704, which require reasonable accommodation of a qualified employee who is handicapped.

(d) An agency may offer a medical examination when an individual has made a request for medical reasons for a change in duty status, assignment, or working conditions or any other benefit or special treatment (including reemployment on the basis of full or partial recovery from a medical condition) and the agency, after it has received and reviewed medical documentation, determines that it cannot grant, support, or act further on the request without verification of the clinical findings and current clinical status.

(e) Any medical evaluation required of an individual shall be carried out and used in accordance with 29 CFR 1613.706.

§ 339.302 Examination procedures.

(a) When an agency orders or offers a medical examination under this subpart it shall inform the applicant or employee in writing of its reasons for ordering or offering the examination and the consequences of failure to cooperate.

(b) The agency shall designate the examining physician, but shall offer the employee or former employee an opportunity to submit medical documentation from his or her personal physician, which the agency shall review and consider.

(c) The agency shall provide the examining physician with a copy of any approved medical evaluation protocol, any applicable standards and requirements for the position, and/or a detailed description of the duties of the position, including critical elements, as defined in Part 430 of this chapter, physical demands, and environmental factors.

(d) If the examination is ordered or offered as a regularly recurring, periodic examination as a part of an established medical retention or surveillance program under § 339.301(a), notification required under paragraphs (a) through (c) of this section may be made once, covering a series of examinations, provided the notice is issued prior to the first required examination.

(e) An agency shall order or offer a psychiatric evaluation to an employee only when the employee first provides results of a general medical or psychiatric examination, or the agency has first conducted a non-psychiatric medical examination, and, after review of the documentation or examination report, the agency's physician concurs that a psychiatric evaluation is warranted for medical reasons. Unless not medically indicated in the psychiatrist's judgment, a psychiatric evaluation normally consists of more than one interview with the employee and includes psychological testing.

(f) All medical specialty examinations ordered or offered under this subpart shall be conducted by a medical specialist.

§ 339.303 Payment for examination.

Agencies shall pay for all agency ordered or agency offered examinations of employees conducted under this subpart. Agencies shall also pay for all required pre-employment examinations of applicants which are conducted by a physician designated by the agency. However, applicants and employees, not the agency, shall pay for a medical examination conducted by a private physician selected by the applicant or employee, unless a statute, regulation, or appropriations act gives the agency authority to pay this expense.

§ 339.304 Records and reports.

(a) Agencies shall receive and maintain all medical documentation and records of examinations obtained under this part in accordance with instructions provided by OPM.

(b) The report of an examination conducted under this subpart shall be made available to the applicant or employee under the provisions of § 294.401 of this chapter.

(c) Agencies shall forward to the Office of Workers' Compensation Programs (OWCP), Department of Labor, a copy of all medical documentation and reports of examinations of individuals who are receiving or have applied for injury compensation benefits including continuation of pay. The agency shall also report to the OWCP the failure of such individuals to report for examinations that the agency orders under this subpart.

PART 340—OTHER THAN FULL-TIME CAREER EMPLOYMENT (PART-TIME, SEASONAL, ON-CALL, AND INTERMITTENT)

Subpart A—Principal Statutory Requirements—Part-Time Employment

Sec.

340.101 Principal statutory requirements.

Subpart B—Regulatory Requirements—Part-Time Employment

340.201 Regulatory requirements.
340.202 General.
340.203 Technical assistance.
340.204 Agency reporting.

Subpart C—[Reserved]

Subpart D—Regulatory Requirements—Seasonal, On-Call, and Intermittent Employment

340.401 Definitions.
340.402 Appropriate use.

AUTHORITY: 5 U.S.C. 3401 et seq.

SOURCE: 44 FR 57380, Oct. 5, 1979, unless otherwise noted.

Subpart A—Principal Statutory Requirements—Part-Time Employment

§ 340.101 Principal statutory requirements.

This subpart incorporates for the benefit of the user of the principal statutory requirements governing part-time career employment, as contained in 5 U.S.C. 3401-3408, and related provisions of Pub. L. 95-437.

SHORT TITLE

SEC. 1. This Act may be cited as the "Federal Employees Part-Time Career Employment Act of 1978".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) many individuals in our society possess great productive potential which goes unused because they cannot meet the requirements of a standard workweek; and

(2) part-time permanent employment—

(A) provides older individuals with a gradual transition into retirement;

(B) provides employment opportunities to handicapped individuals or others who require a reduced workweek;

(C) provides parents opportunities to balance family responsibilities with the need for additional income;

(D) benefits students who must finance their own education or vocational training;

(E) benefits the Government, as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility in meeting work requirements, and filling shortages in various occupations; and

(F) benefits society by offering a needed alternative for those individuals who require or prefer shorter hours (despite the reduced income), thus increasing jobs available to reduce unemployment while retaining the skills of individuals who have training and experience.

(b) The purpose of this Act is to provide increased part-time career employment opportunities throughout the Federal Government.

"§ 3401 Definitions

"For the purpose of this subchapter—

"(1) 'agency' means—

"(A) an Executive agency;

"(B) a military department;

"(C) an agency in the judicial branch;

"(D) the Library of Congress;

"(E) the Botanic Garden; and

"(F) the Office of the Architect of the Capitol; but does not include—

"(i) a Government controlled corporation;

"(ii) the Tennessee Valley Authority;

"(iii) the Alaska Railroad;

"(iv) the Virgin Island Corporation;

"(v) the Panama Canal Company;

"(vi) the Federal Bureau of Investigation, Department of Justice;

"(vii) the Central Intelligence Agency; and

"(viii) the National Security Agency, Department of Defense; and

"(2) 'part-time career employment' means part-time employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

"§ 3402. Establishment of part-time career employment programs

"(a) (1) In order to promote part-time career employment opportunities in all grade levels, the head of each agency, by regulation, shall establish and maintain a program for part-time career employment within such agency. Such regulations shall provide for—

"(A) the review of positions which, after such positions become vacant, may be filled on a part-time career employment basis (including the establishment of criteria to be used in identifying such positions);

"(B) procedures and criteria to be used in connection with establishing or converting positions for part-time career employment, subject to the limitations of section 3393 of this title;

"(C) annual goals for establishing or converting positions for part-time career employment, and a timetable setting forth interim and final deadlines for achieving such goals;

"(D) a continuing review and evaluation of the part-time career employment program established under such regulations; and

"(E) procedures for notifying the public of vacant part-time positions in such agency, utilizing facilities and funds otherwise available to such agency for the dissemination of information.

"(2) The head of each agency shall provide for communication between, and coordination of the activities of, the individuals within such agency whose responsibilities relate to the part-time career employment program established within that agency.

"(3) Regulations established under paragraph (1) of this subsection may provide for such exceptions as may be necessary to carry out the mission of the agency.

"(b) (1) The Civil Service Commission, by regulation, shall establish and maintain a program under which it shall, on the request of an agency, advise and assist such agency in the establishment and maintenance of its part-time career employment program under this subchapter.

"(2) The Commission shall conduct a research and demonstration program with respect to part-time career employment within the Federal Government. In particular, such program shall be directed to—

"(A) determining the extent to which part-time career employment may be used in filling positions which have not traditionally been open for such employment on any extensive basis, such as supervisory, managerial, and professional positions;

"(B) determining the extent to which job-sharing arrangements may be established for various occupations and positions; and

"(C) evaluating attitudes, benefits, costs, efficiency, and productivity associated with part-time career employment, as well as its various sociological effects as a mode of employment.

"§ 3403. Limitations

"(a) An agency shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis.

"(b) Any person who is employed on a full-time basis in an agency shall not be required to accept part-time employment as a condition of continued employment.

"§ 3404. Personnel ceilings

"In administering any personnel ceiling applicable to an agency (or unit therein), an employee employed by such agency on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek. This section shall become effective on October 1, 1980.

"§ 3405. Nonapplicability

"(a) If, on the date of enactment of this subchapter, there is in effect with respect to positions within an agency a collective-bargaining agreement which establishes the number of hours of employment a week, then this subchapter shall not apply to those positions.

"(b) This subchapter shall not require part-time career employment in positions the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate fixed for GS-16 of the General Schedule.

"§ 3406. Regulations

"Before any regulation is prescribed under this subchapter, a copy of the proposed regulation shall be published in the FEDERAL REGISTER and an opportunity provided to interested parties to present written comment and, where practicable, oral comment. Initial regulations shall be prescribed not later than 180 days after the date of the enactment of this subchapter.

"§ 3407. Reports

"(a) Each agency shall prepare and transmit on a biannual basis a report to the Office of Personnel Management on its activities under this subchapter, including—

"(1) details on such agency's progress in meeting part-time career employment goals established under section 3392 of this title; and

"(2) an explanation of any impediments experienced by such agency in meeting such goals or in otherwise carrying out the provisions of this subchapter, together with a statement of the measures taken to overcome such impediments.

"(b) The Commission shall include in its annual report under section 1308 of this title a statement of its activities under this subchapter, and a description and evaluation of the activities of agencies in carrying out the provisions of this subchapter.

"§ 3408. Employee organization representation

"If an employee organization has been accorded exclusive recognition with respect to a unit within an agency, then the employee organization shall be entitled to represent all employees within that unit employed on a part-time career employment basis.".

(b) Subpart B of the table of chapters of part III of the analysis of chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"SUBCHAPTER VII—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

"Sec.
"3401. Definitions.
"3402. Establishment of part-time career employment programs.
"3403. Limitations.
"3404. Personnel ceilings.
"3405. Nonapplicability.
"3406. Regulations.
"3407. Reports.
"3408. Employee organization representation.

Sec. 4. (a) Section 8347(g) of title 5, United States Code, is amended by adding at the end thereof the following: "However, the Commission may not exclude any employee who occupies a position on a part-time career employment basis (as defined in section 3391(2) of this title).".

(b) Section 8716(b) of such title 5 is amended—

(1) by striking out of the second sentence "or part-time";

(2) by striking out "or" at the end of clause (1);

(3) by striking out the period at the end of clause (2) and inserting in lieu thereof "; or"; and

(4) by adding at the end thereof the following:

"(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3391(2) of this title).".

(c) (1) Section 8913(b) of such title 5 is amended—

(A) by striking out "or" at the end of clause (1);

(B) by striking out the period at the end of clause (2) and inserting in lieu thereof "; or"; and

(C) by adding at the end thereof the following:

"(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3391(2) of this title).".

(2) (A) Section 8906(b) of such title 5 is amended—

(i) by striking out "paragraph (2)" in paragraph (1) and inserting in lieu thereof "paragraphs (2) and (3)"; and

(ii) by adding at the end thereof the following new paragraph:

"(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3391(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Commission)".

(B) The amendments made by subparagraph (A) shall not apply with respect to any employee serving in a position on a part-time career employment basis on the date of the enactment of this Act for such period as the employee continues to serve without a break in service in that or any other position on such part-time basis.

Sec. 5. Each report prepared by an agency under section 3397(a) of title 5, United States Code (as added by this Act), shall, to the extent to which part-time career employment opportunities have been extended by such agency during the period covered by such report to each group referred to in subparagraphs (A), (B), (C), and (D), of section 2(a)(2) of this Act.

[44 FR 57380, Oct. 5, 1979, as amended at 49 FR 17722, Apr. 25, 1984]

Subpart B—Regulatory Requirements—Part-Time Employment

SOURCE: 44 FR 57380, Oct. 5, 1979, as amended at 49 FR 17722, Apr. 25, 1984, unless otherwise noted.

§ 340.201 Regulatory requirements.

This subpart contains the regulations of the Office of Personnel Management which implement the above sections of Chapter 34 (as set out in § 340.101).

§ 340.202 General.

(a) *Definitions.* "Part-time career employment" means regularly scheduled work of from 16 to 32 hours per week performed by an employee of an agency as defined in 5 U.S.C. 3401 (a) through (f), who has an appointment in tenure group I or II and who becomes employed on such part-time basis on or after April 8, 1979.

"Tenure group I" applies to employees in the competitive service under career appointments who are not serving probation and permanent employees in the excepted service whose appointments carry no restrictions or conditions.

"Tenure group II" applies to employees in the competitive service serving probation, career-conditional employees, and career employees in obligated positions. It also includes employees in the excepted service serving trial periods, whose tenure is indefinite solely because they occupy obligated positions; or whose tenure is equivalent to career-conditional in the competitive service.

(b) *Agency Exceptions.* As an exception to the general definition of part-time employment in § 340.202(a) and under the authority provided in 5 U.S.C. 3402(a)(3), an agency may permit an employee who has an appointment in tenure group I or II to perform regularly scheduled work of from 1 to 15 hours per week.

(c) *Mixed Tours of Duty.* The provisions of this subpart and the term "part-time career employment" do not apply to employees with appointments in tenure groups I or II who work under mixed tours of duty. A mixed tour of duty consists of annually recurring periods of full-time, part-time or intermittent service.

§ 340.203 Technical assistance.

(a) The Office of Personnel Management shall provide, within available resources, consultation and technical advice and assistance to agencies to aid them in expanding career part-time employment opportunities. This assistance shall include but not be limited to:

(1) Help in developing part-time career employment programs;

(2) Information on public and private sector part-time employment practices;

(3) Development of special recruitment and selection techniques for filling part-time positions;

(4) Interpretations of part-time employment law, regulations and policy;

(5) Guidance on job sharing and position restructuring.

(b) Request for information and assistance should be directed to the Associate Director for Staffing Services, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, or the nearest OPM regional office.

§ 340.204 Agency reporting.

(a) Agency reports required under 5 U.S.C. 3407 shall be based on data as of March 31 and September 30 each year and shall be provided to the Office of Personnel Management no later than May 15 and November 15 respectively.

(b) Each agency shall include with such reports a copy of any agencywide part-time career employment program regulations and instructions issued during the 6-month period preceding the report date.

(c) Reports should be sent to the Associate Director for Staffing Services, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

Subpart C—[Reserved]

Subpart D—Regulatory Requirements—Seasonal, On-Call, and Intermittent Employment

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 49 FR 17722, Apr. 25, 1984, unless otherwise noted.

§ 340.401 Definitions.

(a) Seasonal employment means annually recurring periods of work of less than 12 months each year. Seasonal employees are placed in nonduty/nonpay status and recalled to duty in accordance with preestablished conditions of employment.

(b) On-call employment means recurring periods of work on an as needed basis during periods of heavy workload with an expected cumulative service period of at least six months in pay status each year. On-call employees work regularly scheduled tours of duty while in pay status and are placed in nonduty/nonpay status and recalled to duty in accordance with preestablished conditions of employment. On-call employees move into the agency's year-round work force as vacancies occur.

(c) Intermittent employment means employment without a regularly scheduled tour of duty.

§ 340.402 Appropriate use.

Agencies are authorized to employ seasonal, on-call, and intermittent personnel serving under career or career-conditional appointments in accordance with procedures published in Federal Personnel Manual (FPM) Chapter 340, Other Than Full-Time Career Employment (Part-time, Seasonal, On-Call and Intermittent). Procedures governing employment of individual's appointed under other authorities are contained in other appropriate chapters of the FPM.

PART 351—REDUCTION IN FORCE

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AUTHORITY: 5 U.S.C. 1302, 3502; § 351.1005 also issued under 5 U.S.C. 3315.

SOURCE: 51 FR 319, Jan. 3, 1986, unless otherwise noted.

EFFECTIVE DATE NOTE: At 51 FR 319, Jan. 3, 1986, Subparts A through I of Part 351 were revised effective February 3, 1986. For the convenience of the reader, Subparts A through I which are in effect through February 3, 1986 are set forth immediately following Part 351.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 351.201 Use of regulations.

(a)(1) Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated. This includes determining when there is a surplus of employees at a particular location in a particular line of work.

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position die to erosion of duties when such action will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days.

(b) This part does not require an agency to fill a vacant position. However, when an agency, at its discretion, chooses to fill a vacancy by an employee who has been reached for release from a competitive level for one of the reasons in paragraph (a)(2) of this section, this part shall be followed.

(c) Each agency is responsible for assuring that the provisions in this part are uniformly and consistently applied in any one reduction in force.

(d) An agency authorized to administer foreign national employee programs under section 408 of the Foreign Service Act of 1980 (22 U.S.C. 3968) may include special plans for reduction in force in its foreign national employee programs. In these special plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

§ 351.202 Coverage.

(a) *Employees covered.* Except as provided in paragraph (b) of this section, this part applies to each civilian employee in:

(1) The executive branch of the Federal Government; and

(2) Those parts of the Federal Government outside the executive branch which are subject by statute to competitive service requirements or are determined by the appropriate legislative or judicial administrative body to be covered hereunder. Coverage includes administrative law judges except as modified by Part 930 of this chapter.

(b) *Employees excluded.* This part does not apply to an employee:

(1) In a position in the Senior Executive Service; or

(2) Whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the United States Senate, except a postmaster.

(c) *Actions excluded.* This part does not apply to:

(1) The termination of a temporary or term promotion or the return of an employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.

(2) A change to lower grade based on the reclassification of an employee's position due to the application of new classification standards or the correction of a classification error.

(3) A change to lower grade based on reclassification of an employee's position due to erosion of duties, except that this exclusion does not apply to such reclassification actions that will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days. This exception ends at the completion of the reduction in force.

(4) The change of an employee from regular to substitute in the same pay level in the U.S. Postal Service field service.

(5) The release from a competitive level of a National Guard technician under section 709 of title 32, United States Code.

(6) Placement of an employee serving on an intermittent, part-time, on-call, or seasonal basis in a nonpay and nonduty status in accordance with conditions established at time of appointment.

§ 351.203 Definitions.

In this part:

"Annual Performance Rating of Record" means an official performance rating under a performance appraisal system approved by OPM in accordance with 5 U.S.C., chapter 43; or for an agency not subject to chapter 43, an official performance rating as provided for in the agency's appraisal system.

"Competing employee" means an employee in tenure group I, II, or III.

"Days" means calendar days.

"Function" means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

"Local commuting area" means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

"Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization.

"Representative rate" means the fourth step of the grade for a position subject to the General Schedule, the prevailing rate for a position under a wage-board or similar wage-determining procedure, and for other positions, the rate designated by the agency as representative of the position. Employees covered by the Performance Management and Recognition System are General Schedule employees for purposes of determining representative rate.

"Transfer of function" means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area.

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction force is necessary.

§ 351.205 Authority of OPM.

The Office of Personnel Management may establish further guidance and instructions for the planning, preparation, conduct, and review of reductions in force through the Federal Personnel Manual system. OPM may examine an agency's preparations for reduction in force at any stage. When OPM finds that an agency's preparations are contrary to the express provisions or to the spirit and intent of these regulations or that they would result in violation of employee rights or equities, OPM may require appropriate corrective action.

Subpart C—Transfer of Function

§ 351.301 Applicability.

This subpart is applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function, regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One a competing employee is identified with a transferring function if:

(1) The employee performs the function during all or a major part of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her working time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.

(d) Under Identification Method Two, competing employees are identified with a transferring function in the inverse order of their retention standing.

(e)(1) The competitive area losing the function may permit other employees in the competitive area to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two. However, the competitive area may permit these other employees to volunteer for transfer only if no competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of his or her to the competitive area that is gaining the function.

(2) If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area should give preference to the volunteers with the highest retention standing.

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in Subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area may consist of all or part of an agency. The minimum competitive area in the departmental service is a bureau, major command, directorate or other equivalent major subdivision of an agency within the local commuting area. In the field, the minimum competitive area is an activity under separate administration within the local commuting area. A competitive area must be defined solely in terms of an agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

§ 351.403 Competitive level.

(a) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee. Sex may not be the basis for assigning a position to a competitive level, except for a position which OPM has determined certification of eligibles by sex is justified.

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) *By service.* Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) *By appointment authority.* Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) *By pay schedule.* Separate levels shall be established for positions under different pay schedules.

(4) *By work schedule.* Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

(5) *By supervisory or nonsupervisory status.* Separate levels shall be established for positions filled by a supervisor or management official as defined in 5 U.S.C. 7103(a)(10) and (11), except that a probationary period required by Subpart I of Part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

(6) *By trainee status.* Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all of the characteristics covered in § 351.702(e)(1) through (e)(4) of this part.

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

(1) In the competitive level;

(2) Temporarily promoted from the competitive level by temporary or term promotion; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b)(1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision under Part 432 of this chapter to remove him or her because of unacceptable (Level 1) or equivalent performance.

§ 351.405 Employees demoted because of unacceptable performance.

An employee who has received a written decision under Part 432 of this chapter to demote him or her because of unacceptable (Level 1) or equivalent performance competes under this part from the position to which he or she will be or has been demoted.

Subpart E—Retention Standing

§ 351.501 Order of retention—competitive service.

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as follows:

(1) By tenure group I, group II, group III; and

(2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and

(3) Within each subgroup by years of service as augmented by credit for performance under § 351.504, beginning with the earliest service date.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.)

(2) Group II includes each career-conditional employee and each employee serving a probationary period under Subpart H of Part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this chapter is in group II if that employee has not completed a probationary period under Subpart H of Part 315 of this chapter).

(3) Group III includes all employees serving under indefinite appointment, temporary appointment pending establishment of register, status quo appointment, and any other nonstatus nontemporary appointment.

(c) Subgroups are defined as follows:

(1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not included in subgroup AD.

(3) Subgroup B includes each nonpreference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraphs (d)(1), (2), or (3) of this section, except as limited by paragraph (d)(4) or (d)(5):

(1) The employee's military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in paragraph (d)(1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under chapter 67 of title 10, United States Code, and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

§ 351.502 Order of retention—excepted service.

Competing employees in the excepted service shall be classified on retention registers in a way that corresponds to that under § 351.501 for employees in the competitive service having similar tenure of employment, veteran preference and performance ratings except that an employee who completes 1 year of current continuous excepted service under a temporary appointment is in tenure group III.

§ 351.503 Length of service.

(a) Each agency shall establish a service date for each competing employee.

(b) An employee's service date is whichever of the following dates reflects the employee's creditable service:

(1) The date the employee entered on duty, when he or she has no previous creditable service;

(2) The date obtained by subtracting the employee's total creditable previous service from the date he or she last entered on duty; or

(3) The date obtained by subtracting from the date in paragraph (b)(1) or (b)(2) of this section, the service equivalent allowed for performance ratings under § 351.504.

(c) An employee who is a retired member of a uniformed service is entitled to credit under this part for:

(1) The length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) The total length of time in active service in the armed forces if the employee is considered a preference eligible under § 351.501(d) of this part.

(d) Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

§ 351.504 Credit for performance.

(a) Annual performance ratings of record of outstanding (Level 5), exceeds fully successful (Level 4), fully successful (Level 3), minimally successful (Level 2), and unacceptable (Level 1), or equivalent, are those ratings established under Part 430 of this chapter.

(b) An employee's entitlement to additional service credit for performance under this subpart shall be based on the employee's last three annual performance ratings of record received during the 3-year period prior to the date of issuance of specific reduction-in-force notices.

(c) Service credit for employees who do not have three actual annual performance ratings of record during the 3-year period prior to the date of issuance of specific reduction-in-force notices shall be determined as follows:

(1) An employee who has not received an annual performance rating of record shall receive credit for performance on the basis of three assumed ratings of fully successful (Level 3) or equivalent.

(2) An employee who has received at least one but fewer than three previous annual performance ratings of record shall receive credit for performance on the basis of the actual rating(s) received and of one, or two, assumed rating(s) of fully successful (Level 3) or equivalent, whichever is needed to credit the employee with three ratings.

(d) The additional service credit an employee for performance under this subpart shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three (actual and/or assumed) annual performance ratings of record computed on the following basis:

(1) Twenty additional years of service for each performance rating of outstanding (Level 5) or equivalent;

(2) Sixteen additional years of service for each performance rating of ex-

ceeds fully successful (Level 4) or equivalent; or

(3) Twelve additional years of service for each performance rating of fully successful (Level 3) or equivalent.

(e) The current annual performance rating of record shall be the last annual rating except that:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in Part 432 of this chapter shall have the improved rating considered as the current annual performance rating of record; and

(2) An employee's current annual perfomance rating of record shall be presumed to be fully successful when the employee had been demoted or reassigned under Part 432 of this chapter because of unacceptable performance and as of the date of issuance of specific reduction-in-force notices has not received a rating for performance in the position to which demoted or reassigned.

§ 351.505 Records.

Each agency shall maintain the current correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of its retention registers and related records by:

(a) A representative of OPM; and

(b) An employee of the agency to the extent that the registers and records have a bearing on a specific action taken, or to be taken, against the employee.

The agency shall preserve intact all registers and records relating to an employee for at least 1 year from the date the employee is issued a specific notice.

§ 351.506 Effective date of retention standing.

Except for applying the performance factor as provided in § 351.504:

(a) The retention standing of each employee released from a competitive level in the order prescribed in § 351.601 is determined as of the date the employee is so released.

(b) The retention standing of each employee temporarily retained in a competitive level under § 351.608 is determined as of the date the employee would have been released from the competitive level had temporary retention action under § 351.608 not been taken. The retention standing of each employee so retained remains fixed until the completion of the reduction-in-force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction-in-force action to accord with the employee's proper retention standing as of the effective date established by this section.

Subpart F—Release From Competitive Level

§ 351.601 Order of release from competitive level.

(a) Each agency shall select competing employees for release from a competitive level under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under § 351.606 when an employee is retained under a mandatory exception or under § 351.806 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.607 when an employee is retained under a permissive continuing exception or under § 351.608 when an employee is retained under a permissive temporary exception.

(b) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(a) A specifically limited temporary appointment;

(b) A specifically limited temporary or term promotion;

(c) A written decision under Part 432 of this chapter of removal or demotion from the competitive level because of unacceptable performance.

§ 351.603 Actions subsequent to release from competitive level.

An employee reached for release from a competitive level shall be offered assignment to another position in accordance with Subpart G of this part. If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer under Subpart G, the employee shall be furloughed or separated.

§ 351.604 Use of furlough.

(a) An agency may furlough a competing employee only when it intends within 1 year to recall the employee to duty in the position from which furloughed.

(b) An agency may not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.

(c) An agency may not furlough a competing employee for more than 1 year.

(d) When an agency recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with highest standing employee.

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 3 months, it shall release employees in subgroup order but may release them regardless of retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee shall so state and also shall give the date the liquidation will be completed. An agency may apply § 351.607 and § 351.608 in liquidation.

§ 351.606 Mandatory exceptions.

(a) When an agency applies § 351.601 or § 351.605, it shall give retention priorities over other employees in the same subgroup to each group I or II employee entitled under 38 U.S.C. 2021 or 2024, to retention, for 6 months or 1 year after restoration.

(b) Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601 or § 351.605.

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

(a) An agency may make exception for not more than 90 days to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee for 90 days or less after the effective date of release of a higher-standing employee from the same competitive level:

(1) To continue an activity without undue interruption; or

(2) To satisfy a Government obligation to the retained employee; or

(3) When the temporary retention of the lower-standing employee does not adversely affect the right of any higher-standing employee who is released ahead of the lower-standing employee. The temporary retention of a lower-standing employee on sick leave as a permissive exception may exceed 90 days but may not exceed the date the employee's sick leave is exhausted.

(b) When the agency retains an employee for more than 30 days after the effective date of release of a higher-standing employee from the same competitive level, it shall notify in writing each higher-standing employee reached for release of the reasons for the exception and the date the lower-standing employee's retention will end. When the agency retains a lower-standing employee, it shall list opposite the employee's name on the retention register the reasons for the exception and the date this employee's retention will end.

Subpart G—Assignment Rights (Bump and Retreat)

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraph (b), (c), and (d) of this section to another competitive service position which requires no reduction or the least possible reduction in representative rate. The employee must be qualified for the offered position which shall be in the same competitive area and last at least three months.

(b) *Lower subgroup—bumping.* A released employee shall be assigned in accordance with paragraph (a) of this section and bump to a position that:

(1) Is held by another employee in a lower tenure group or in a lower subgroup within the same tenure group; and

(2) Is no more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released.

(c) *Same subgroup—retreating.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and retreat to a position that:

(1) Is held by another employee with lower retention standing in the same tenure group and subgroup;

(2) Is not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent); and

(3) Is the same position, or an essentially identical one, previously held by the released employee in a Federal agency.

(d) *Limitation.* An employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent may be assigned under paragraph (c) of this section only to a position held by another employee with a current annual performance rating of record no higher than minimally successful (Level 2) or equivalent.

(e) *Pay rates.* (1) The determination of equivalent grade intervals shall be based on a comparison of representative rates.

(2) Each employee's assignment rights shall be determined on the basis of the pay rates in effect on the date of issuance of specific reduction-in-force notices, except that when it is officially known on the date of issuance of notices that new pay rates have been approved and will become effective by the effective date of the reduction in force, assignment rights shall be determined on the basis of the new pay rates.

§ 351.702 Qualifications for assignment.

(a) Except as provided in § 351.703, an employee is qualified for assignment under § 351.701 if the employee:

(1) Meets the OPM standards and requirements for the position, including any minimum educational requirement, and any selective placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position;

(3) Meets any special qualifying condition which the OPM has approved for the position; and

(4) Clearly demonstrates on the basis of overall background, including recency of experience, a positive ability to successfully perform all critical elements of the specific position upon entry into it, without undue interruption to that activity and without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

(b) The sex of an employee may not be considered in determining whether an employee is qualified for a position, except for positions which OPM has determined certification of eligibles by sex is justified.

(c) An employee who is released from a competitive level during a leave of absence because of a corpensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to recovery as provided by 5 U.S.C. 8151 and Part 353 of this chapter.

(d) If an agency determines, on the basis of evidence before it, that a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this part, the agency must notify the OPM of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within 15 days of the notification, to the OPM which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. The OPM shall make a final determination concerning the physical ability of the employee to perform the duties of the position. This determination must be made before the agency may select any other person for the position. When the OPM has completed its review of the proposed disqualification on the basis of physical disability, it must sent its finding to both the agency and the employee. The agency must comply with the findings of the OPM. The functions of the OPM under this paragraph may not be delegated to an agency.

(e) An agency may formally designate as a trainee or developmental position a position in a program with all of the following characteristics:

(1) The program must have been designed to meet the agency's needs and requirements for the development of skilled personnel;

(2) The program must have been formally designated, with its provisions made known to employees and supervisors;

(3) The program must be developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and

(4) The program must be fully implemented, with the participants chosen through standard selection procedures. To be considered qualified for assignment under § 351.701 to a formally designated trainee or developmental position in a program having all of the characteristics covered in paragraphs (e)(1), (2), (3), and (4) of this section, an employee must meet all of the conditions required for selection and entry into the program.

§ 351.703 Exception to qualifications.

An agency may assign an employee under § 351.201(b) § 351.701 without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment under § 351.201(b) or § 351.705 to a position having a representative rate equal to that to which he or she would be entitled under § 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) § 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

(1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with § 351.701 when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(2) Permit an employee in subgroup III-AD to displace an employee in subgroup III-A or III-B, or permit an employee in subgroup III-A to displace an employee is subgroup III-B consistent with § 351.701; or

(3) Provide competing employees in the excepted service with assignment rights similar to those in § 351.701 and in paragraphs (a)(1) and (2) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of an other-than-full-time employee to a full-time position;

(4) May not provide for the assignment of a full-time employee to an other-than-full-time position;

(5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and

(6) May not provide for the assignment of an employee in an excepted position to a position in the competitive service.

Subpart H—Notice to Employee

§ 351.801 Notice period.

(a) Each competing employee selected for release from a competitive level under this part is entitled to a written notice at least 30 full days before the effective date of release. When a general notice is supplemented by a specific notice, an agency may not release an employee from his or her competitive level until at least 10 days after the employee's receipt of the specific notice.

(b) The notice shall not be issued more than 90 days before release except with the prior approval of OPM.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under § 351.606 or § 351.608, the notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from the competitive level.

§ 351.802 General and specific notices.

When an agency cannot specifically determine all individual actions at the start of the notice period, it may issue general notices which shall later be supplemented by specific notices. The combined general and specific notice periods shall meet the requirements in § 351.801, and the combined contents of the general and specific notices shall meet the requirements in § 351.803.

§ 351.803 Content of notice.

(a) The notice shall state specifically the action to be taken and its effective date except as provided in paragraph (b) of this section; the employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last three years; the place where the employee may inspect the regulations and records pertinent to this case; the reasons for retaining a lower-standing employee in the same competitive level under § 351.607 or § 351.608; the information on reemployment rights except as permitted by § 351.804; and the employee's right, as applicable, to grieve under a negotiated grievance procedure or to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) A general notice shall inform the employee that action under this part may be necessary but a specific action has not yet been determined. The notice shall state that as soon as the agency determines what action, if any, will be taken under this part the employee will receive specific notice of the action to be taken. The general notice shall contain an expiration date. A general notice may also include other information specified in paragraph (a) of this section.

§ 351.804 Notice concerning consideration for reemployment.

An employee who receives a specific notice of separation under this part must also be given information concerning the right to reemployment consideration under the provisions of Subparts B and C of Part 330 of this chapter. This information should be included in or with the specific reduction-in-force notice; otherwise, a separate supplemental notice covering this information must be given to the employee.

§ 351.805 Expiration of notice.

(a) An agency may cancel an unexpired general notice, or may renew it for additional periods within the maximum notice period referred to in § 351.801. A general notice expires as stated therein unless, on or before the expiration date, the employee receives a renewal of the general notice or a specific notice.

(b) A specific notice expires except when followed by the action specified, or by action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action. An agency may not take action before the effective date in the specific notice. An action taken after the specified date in the specific notice shall not be ruled invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for reduction in force as a result of the action or when it results in a notice period longer than the maximum allowed.

§ 351.806 New notice required.

An employee is entitled to a new written notice of at least 30 full days if the agency decides to take an action more severe than first specified.

§ 351.807 Status during notice period.

When possible, the agency shall retain the employee on active duty during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, on leave without pay with his or her consent, or in a nonpay status without his or her consent.

Subpart I—Appeals and Corrective Action

§ 351.901 Appeals.

An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction-in-force action may appeal to the Merit Systems Protection Board. Unless the presiding official determines that there are material issues of fact in dispute that would require a hearing for resolution, the review of an agency action shall be confined to the written record.

§ 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

Subpart J—Reemployment Priority List

SOURCE: 46 FR 3805, Jan. 16, 1981, unless otherwise noted.

§ 351.1001 Establishment and maintenance of the reemployment priority list.

Each agency shall establish and maintain a reemployment priority list for each commuting area in which it separates group I or group II employees from competitive positions under this part.

§ 351.1002 Persons covered.

(a) The name of each group I or group II employee who receives a specific notice of separation from a competitive position (as distinguished from an excepted position) under this part is entered on the reemployment priority list.

(b) This priority extends to all competitive positions in the commuting area for which the employee is qualified and available, except as provided in § 351.1005.

(c) Subpart B of Part 330 of this title covers appointment from the reemployment priority list.

§ 351.1003 Employee eligibility.

(a) A full-time group I or group II employee is entered on the reemployment priority list unless he or she has declined assignment under Subpart G of this part to a position that:

(1) Is full-time;

(2) Is competitive;

(3) Is nontemporary; and

(4) Has a representative rate no lower than that of the position from which the employee was separated.

(b) An other-than-full-time group I or group II employee is entered on the reemployment priority list unless he or she has declined assignment under Subpart G of this part to an other-than-full-time position that:

(1) Is of the same type work schedule (i.e., part-time, intermittent, or seasonal) as the position from which the employee was separated;

(2) Is competitive;

(3) Is nontemporary;

(4) Has a representative rate no lower than that of the position from which the employee was separated; and

(5) Has a regularly scheduled administrative workweek no lower than that or the position from which the employee was separated.

§ 351.1004 Duration of eligibility.

(a) The name of a group I employee remains on the reemployment priority list for 2 years, and a group II employee's name for 1 year, from the date he or she was separated.

(b) An employee's name is deleted from the reemployment priority list when the employee submits a written request to the agency asking that his or her name be deleted.

(c) A full-time employee's name is also deleted from the reemployment priority list when the employee:

(1) Accepts a non-temporary, full-time, competitive position; or

(2) Declines under this subpart a full-time, nontemporary, competitive position with a representative rate the same as, or higher than, that of the position from which he or she was separated under this part.

(d) An other-than-full-time employee's name is also deleted from the reemployment priority list when the employee:

(1) Accepts a nontemporary competitive position; or

(2) Declines under this subpart a nontemporary, competitive position with a representative rate, and regularly scheduled administrative workweek, the same as or higher than that of the position from which the employee was separated under this part.

§ 351.1005 Operation of the list in Alaska and overseas.

(a) The name of each group I or group II employee who receives a notice of separation under this part from a competitive position in Alaska or overseas is entered on the reemployment priority list for the area in which the position from which separated is located, except when:

(1) The employee leaves that area; or

(2) The agency has a general program for rotating employees between overseas areas and the United States and the employee's immediately preceding overseas services or residence, combined with prospective overseas service under available appointments, exceeds the maximum duration of an overseas duty tour in the agency's rotation program.

(b) Upon his or her written request, the name of an employee who leaves the area is entered on the agency's reemployment priority list for:

(1) The commuting area from which he or she was employed for Alaskan or overseas service; or

(2) Another area, except in Alaska or overseas, that is mutually acceptable to the employee and the agency.

(c) In addition to any of the reasons, as appropriate, in § 351.1004 (b), (c), or (d), for deleting an employee's name from the reemployment priority list, the name of an employee is deleted from an Alaskan or overseas reemployment priority list when the employee:

(1) Leaves the area covered by that list; or

(2) Becomes disqualified for overseas appointment because of his or her previous service or residence.

EFFECTIVE DATE NOTE: At 51 FR 319, Jan. 3, 1986, Subparts A through I of Part 351 were revised effective February 3, 1986. For the convenience of the reader, Subparts A through I which are in effect through February 3, 1986 are set forth below.

PART 351—REDUCTION IN FORCE

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Subpart I—Appeals and Corrective Action

351.901 Appeals.
351.902 Correction by agency.

AUTHORITY: 5 U.S.C. 1302, 3502, unless otherwise noted.

SOURCE: 48 FR 49464, Oct. 25, 1983, unless otherwise noted.

Subpart A [Reserved]

Subpart B—General Provisions

§ 351.201 Use of regulations.

(a)(1) Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated. This includes determining when there is a surplus of employees at a particular location in a particular line of work.

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient person-

nel ceiling, reorganization, or the exercise of reemployment rights or restoration rights.

(b) This part does not require an agency to fill a vacant position. However, when an agency, at its discretion, chooses to fill a vacancy by an employee who has been reached for release from a competitive level for one of the reasons in paragraph (a)(2) of this section, this part shall be followed.

(c) Each agency is responsible for assuring that the provisions in this part are uniformly and consistently applied in any one reduction in force.

(d) An agency authorized to administer foreign national employee programs under section 408 of the Foreign Service Act of 1980 (22 U.S.C. 3968) may include special plans for reduction in force in its foreign national employee programs. In these plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

§ 351.202 Coverage.

(a) *Employees covered.* Except as provided in paragraph (b) of this section, this part applies to each civilian employee in:

(1) The executive branch of the Federal Government; and

(2) Those parts of the Federal Government outside the executive branch which are subject by statute to competitive service requirements or are determined by the appropriate legislative or judicial administrative body to be covered hereunder.

Coverage includes administrative law judges except as modified by Part 930 of this chapter.

(b) *Employees excluded.* This part does not apply to an employee:

(1) In a position in the Senior Executive Service; or

(2) Whose appointment is required by Congress to be confirmed by, or made with, the advice and consent of the United States Senate, except a postmaster.

(c) *Actions excluded.* This part does not apply to:

(1) The termination of a temporary or term promotion or the return of an employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.

(2) A change to lower grade based on the reclassification of an employee's position due to erosion of duties, the application of new classification standards, or the correction of a classification error.

(3) The change of an employee from regular to substitute in the same pay level in the U.S. Postal Service field service.

(4) The release from a competitive level of a National Guard technican under section 709 of title 32, United States Code.

§ 351.203 Definitions.

In this part:

"Competing employee" means an employee in tenure group I, II, or III.

"Days" means calendar days.

"Function" means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

"Local commuting area" means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back an forth daily to their usual employment.

"Performance rating" means an official performance rating under a performance appraisal system approved by OPM in accordance with 5 U.S.C., chapter 43; or for an agency not subject to chapter 43, an official performance rating as provided for in the agency's appraisal system.

"Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization.

"Representative rate" means the fourth step of the grade for a position subject to the General Schedule, the prevailing rate for a position under a wage-board or similar wage-determining procedure, and for other positions, the rate designated by the agency as representative of the position. Employees covered by the Merit Pay System are General Schedule employees for purposes of determining representative rate.

"Transfer of function" means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas; or the movement of the competitive area in which the function is performed to another commuting area.

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction in force is necessary.

§ 351.205 Authority of OPM.

The Office of Personnel Management may establish further guidance and instructions for the planning, preparation, conduct, and review of reductions in force through the Federal Personnel Manual system. OPM may examine an agency's preparations for reduction in force at any stage. When OPM finds that an agency's preparations are contrary to the express provisions or to the spirit and intent of these regulations or that they would result in violation of employee rights or equities, OPM may require appropriate corrective action.

Subpart C—Transfer of Function

§ 351.301 Applicability.

This subpart is applicable when the work of one or more employees is moved from one competitive area to another, regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal perference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is use only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One a competing employee is identified with a transferring function if:

(1) The employee performs the function during all or a major part of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her working time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.

(d) Under Identification Method Two, competing employees are identified with a transferring function in the inverse order of their retention standing.

(e)(1) The competitive area losing the function may permit other employees in the competitive area to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two. However, the competitive area may permit these other employees to volunteer for transfer only if no competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of him or her to the competitive area that is gaining the function.

(2) If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area should give preference to the volunteers with the highest retention standing.

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in Subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area may consist of all or part of an agency. The minimum competitive area in the departmental service is a bureau, major command, directorate or other equivalent major subdivision of an agency within the local commuting area. In the field, the minimum competitive area is an activity under separate administration within the local commuting area. A competitive area must be defined solely in terms of an agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

§ 351.403 Competitive level.

(a) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee. Sex may not be the basis for assigning a position to a competitive level, except for a position which OPM has determined certification of eligibles by sex is justified.

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) By service. Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) By appointment authority. Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) By pay schedule. Separate levels shall be established for positions under different pay schedules.

(4) By work schedule. Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

(5) By supervisory or nonsupervisory status. Separate levels shall be established for positions filled by a supervisor or management official as defined in 5 U.S.C. 7103(a) (10) and (11), except that a probationary period required by Subpart I of Part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

(6) By trainee status. Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all the characteristics covered in § 351.702 (e)(1) through (e)(4) of this part.

(c) Competitive levels shall be submitted in advance to OPM and must be in effect at least 90 days prior to a reduction in force. Descriptions of competitive levels when established must be made readily available for review.

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

(1) In the competitive level.

(2) Temporarily promoted from the competitive level by temporary or term promotion; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b)(1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision under Part 432 of this chapter to remove him or her because of unacceptable performance.

§ 351.405 Employees demoted because of unacceptable performance.

An employee who has received a written decision under Part 432 of this chapter to demote him or her because of unacceptable performance competes under this part from the position to which he or she will be or has been demoted.

Subpart E—Retention Standing

§ 351.501 Order of retention—competitive service.

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as follows:

(1) By tenure group I, group II, group III; and

(2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and

(3) Within each subgroup by years of service as augmented by credit for performance under § 351.504, beginning with the earliest service data.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.)

(2) Group II includes each career-conditional employee and each employee serving a probationary period under Subpart H of Part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this chapter is in group II if that employee has not completed a probationary period

under Subpart H of Part 315 of this chapter.)

(3) Group III includes all employees serving under indefinite appointment, temporary appointment pending establishment of register, status quo appointment, and any other nonstatus nontemporary appointment.

(c) Subgroups are defined as follows:

(1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not included in subgroup AD.

(3) Subgroup B includes each nonpreference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraphs (d) (1), (2), or (3) of this section, except as limited by paragraph (d)(4) or (d)(5):

(1) The employee's military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in paragraphs (d) (1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under chapter 67 of title 10, United States Code, and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

§ 351.502 Order of retention—excepted service.

Competing employees in the excepted service shall be classified on retention registers in a way that corresponds to that under § 351.501 for employees in the competitive service having similar tenure of employment, veteran preference and performance ratings except that an employee who completes 1 year of current continuous excepted service under a temporary appointment is in tenure group III.

§ 351.503 Length of service.

(a) Each agency shall establish a service date for each competing employee.

(b) An employee's service date is whichever of the following dates reflects the employee's creditable service:

(1) The date the employee entered on duty, when he or she has no previous creditable service;

(2) The date obtained by subtracting the employee's total creditable previous service from the date he or she last entered on duty; or

(3) The date obtained by subtracting from the date in paragraph (b)(1) or (b)(2) of this section, the service equivalent allowed for performance ratings under § 351.504.

(c) An employee who is a retired member of a uniformed service is entitled to credit under this part for:

(1) The length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) The total length of time in active service in the armed forces if the employee is considered a preference eligible under § 351.501(d) of this part.

(d) Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

§ 351.504 Credit for performance.

(a) Performance ratings of outstanding, exceeds fully successful, fully successful, minimally successful and unacceptable are those ratings established under Part 430 of this chapter.

(b) An employee's entitlement to additional service credit for performance under this subpart shall be based on the employee's last three annual performance ratings received during the 3-year period prior to the date of issuance of specific reduction-in-force notices.

(c) The current annual performance rating shall be the last annual rating except that:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in Part 432 of this chapter shall have the improved rating considered as the current annual rating; and

(2) An employee's current annual rating shall be presumed to be fully successful when the employee had been demoted under Part 432 of this chapter because of unacceptable performance and as of the date of issuance of specific reduction-in-force notices has not received a rating for

performance in the position to which demoted.

(d) Service credit for employees who do not have three previous annual ratings shall be determined as follows:

(1) An employee who has not received a rating shall receive credit for performance for three assumed ratings of fully successful or equivalent.

(2) An employee who has received at least one but fewer than three previous annual ratings shall receive credit for performance based on the actual rating(s) received and on one, or two, assumed rating(s) of fully successful or equivalent, whichever is needed to credit the employee with three ratings.

(e) In computing credit for performance an employee shall receive for each of the three previous annual performance ratings:

(1) Ten additional years of service for each performance rating of outstanding or equivalent;

(2) Seven additional years of service for each performance rating of exceeds fully successful or equivalent; or

(3) Five additional years of service for each performance rating of fully successful or equivalent.

(f) Each agency subject to Part 430 of this chapter is responsible for assuring that its application of these provisions is consistent with that part. Each agency not subject to Part 430 shall apply the provisions of its performance appraisal plan as appropriate.

§ 351.505 Records.

Each agency shall maintain the current correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of its retention registers and related records by:

(a) A representative of OPM; and

(b) An employee of the agency to the extent that the registers and records have a bearing on a specific action taken, or to be taken, against the employee.

The agency shall preserve intact all registers and records relating to an employee for at least 1 year from the date the employee is issued a specific notice.

§ 351.506 Effective date of retention standing.

Except for applying the performance factor as provided in § 351.504:

(a) The retention standing of each employee released from a competitive level in the order prescribed in § 351.601 is determined as of the date the employee is so released.

(b) The retention standing of each employee temporarily retained in a competitive level under § 351.608 is determined as of the date the employee would have been released from the competitive level had temporary retention action under § 351.608 not been taken. The retention standing of each employee so retained remains fixed until the completion of the reduction-in-force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction-in-force action to accord with the employee's proper retention standing as of the effective date established by this section.

Subpart F—Release From Competitive Level

§ 351.601 Order of release from competitive level.

(a) Each agency shall select competing employees for release from a competitive level under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under § 351.606 when an employee is retained under a mandatory exception or under §351.806 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.607 when an employee is retained under a permissive continuing exception or under § 351.608 when an employee is retained under a permissive temporary exception.

(b) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(a) A specifically limited temporary appointment;

(b) A specifically limited temporary or term promotion;

(c) A written decision under Part 432 of this chapter of removal or demotion from the competitive level because of unacceptable performance.

§ 351.603 Actions subsequent to release from competitive level.

An employee reached for release from a competitive level shall be offered assignment to another position in accordance with Subpart G of this part. If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer under Subpart G, the employee shall be furloughed or separated.

§ 351.604 Use of furlough.

(a) An agency may furlough a competing employee only when it intends within 1 year to recall the employee to duty in the position from which furloughed.

(b) An agency may not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.

(c) An agency may not furlough a competing employee for more than 1 year.

(d) When an agency recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with the highest standing employee.

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 3 months, it shall release employees in subgroup order but may release them regardless of retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee shall so state and also shall give the date the liquidation will be completed. An agency may apply § 351.607 and § 351.608 in liquidation.

§ 351.606 Mandatory exceptions.

(a) When an agency applies § 351.601 or § 351.605, it shall give the following special retention priorities:

(1) Each group I or II preference eligible employee entitled under section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 459), to retention for 1 year after restoration shall be retained over other employees in the same subgroup for the retention period; and

(2) Each group I or II nonpreference eligible employee entitled under section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 459), to retention for either 6 months or 1 year after restoration shall be retained over other employees in the same subgroup for the retention period.

(b) Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601 or § 351.605.

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

(a) An agency may make exception for not more than 90 days to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee for 90 days or less after the effective date of release of a higher-standing employee from the same competitive level:

(1) To continue an activity without undue interruption; or

(2) To satisfy a Government obligation to the retained employee; or

(3) When the temporary retention of the lower-standing employee does not adversely affect the rights of any higher-standing employee who is released ahead of the lower-standing employee. The temporary retention of a lower-standing employee on sick leave as a permissive exception may exceed 90 days but may not exceed the date the employee's sick leave is exhausted.

(b) When the agency retains an employee for more than 30 days after the effective date of release of a higher-standing employee from the same competitive level, it shall notify in writing each higher-standing employee reached for release of the reasons for the exception and the date the lower-standing employee's retention will end. When the agency retains a lower-standing employee for 30 days or less, it shall list opposite the employee's name on the retention register the reasons for the exception and the date this employee's retention will end.

Subpart G—Assignment Rights (Bump and Retreat)

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a performance rating of minimally successful or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive service position which requires no reduction or the least possible reduction in representative rate. The employee must be qualified for the offered position which shall be in the same competitive area and last at least three months.

(b) *Lower subgroup—bumping.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and bump to a position that:

(1) Is held by another employee in a lower subgroup within the same or a lower tenure group; and

(2) Is no more than two grades (or appropriate grade intervals or equivalent) below the position from which the employee was released.

(c) *Same subgroup—retreating.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and retreat to a position that:

(1) Is held by another employee with a lower retention standing in the same tenure group and subgroup;

(2) Is no more than one grade (or appropriate grade interval or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent); and

(3) Is the same position, or an essentially identical one, previously held by the released employee in a Federal agency.

(d) *Limitations.* (1) An employee in a clerical position may be assigned only to a clerical position and an employee in a nonclerical position may be assigned only to a nonclerical position in an assignment made under paragraph (b) of this section.

(2) An employee with a current annual performance rating of minimally successful or equivalent may be assigned under paragraph (c) of this section only to a position held by another employee with a current annual performance rating no higher than minimally successful or equivalent.

(e) *Pay rates.* (1) The determination of equivalent grade intervals shall be based on a comparison of representative rates.

(2) Each employee's assignment rights shall be determined on the basis of the pay rates in effect on the date of issuance of specific reduction-in-force notices, except that when it is officially known on the date of issuance of notices that new pay rates have been approved and will become effective by the effective date of the reduction in force, assignment rights shall be determined on the basis of the new pay rates.

§ 351.702 Qualifications for assignment.

(a) Except as provided in § 351.703, an employee is qualified for assignment under § 351.701 if the employee:

(1) Meets the OPM standards and requirements for the position, including any minimum educational requirement;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position;

(3) Meets any special qualifying condition which the OPM has approved for the position; and

(4) Clearly demonstrates on the basis of overall background, including recency of experience, a positive ability to successfully perform all critical elements of the specific position upon entry into it, without undue interruption to that activity and without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

(b) The sex of an employee may not be considered in determining whether an employee is qualified for a position, except for positions which OPM has determined certification of eligibles by sex is justified.

(c) An employee who is released from a competitive level during a leave of absence because of a compensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to recovery as provided by 5 U.S.C. 8151 and Part 353 of this chapter.

(d) If an agency determines, on the basis of evidence before it, that a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this part, the agency must notify the OPM of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within 15 days of the notification, to the OPM which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. the OPM shall make a final determination concerning the physical ability of the employee to perform the duties of the position. This determination must be made before the agency may select any other person for the position. When the OPM has completed its review of the proposed disqualification on the basis of physical disability, it must send its finding to both the agency and the employee. The agency must comply with the findings of the OPM. The functions of the OPM under this paragraph may not be delegated to an agency.

(e) An agency may formally designate as a trainee or developmental position a position in a program with all of the following characteristics:

(1) The program must have been designed to meet the agency's needs and requirements for the development of skilled personnel;

(2) The program must have been formally designated, with its provisions made known to employees and supervisors;

(3) The program must be developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and

(4) The program must be fully implemented, with the participants chosen through standard selection procedures. To be considered qualified for assignment under § 351.701 to a formally designated trainee or developmental position in a program having all of the characteristics covered in para-

graphs (e) (1), (2), (3), and (4) of this section, an employee must meet all of the conditions required for selection and entry into the program.

§ 351.703 Exception to qualifications.

An agency may assign an employee under § 351.201(b) or § 351.701 without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment under § 351.201(b) or § 351.705 to a position having a representative rate equal to that to which he or she would be entitled under § 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) Section § 351.701 does not:

(1) Require an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

(1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with § 351.701 when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(2) Permit an employee in subgroup III-AD to displace an employee in subgroup III-A or III-B, or permit an employee in subgroup III-A to displace an employee in subgroup III-B consistent with § 351.701; or

(3) Provide competing employees in the excepted service with assignment rights similar to those in § 351.701 and in paragraphs (a) (1) and (2) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of an other-than-full-time employee to a full-time position;

(4) May not provide for the assignment of a full-time employee to an other-than-full-time position;

(5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and

(6) May not provide for the assignment of an employee in an excepted position to a position in the competitive service.

Subpart H—Notice to Employee

§ 351.801 Notice period.

(a) Each competing employee selected for release from a competitive level under this part is entitled to a written notice at least 30 full days before the effective date of release. When a general notice is supplemented by a specific notice, an agency may not release an employee from his or her competitive level until at least 10 days after the employee's receipt of the specific notice.

(b) The notice shall not be issued more than 90 days before release except with the prior approval of OPM.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under § 351.606 or § 351.608, the notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from the competitive level.

§ 351.802 General and specific notices.

When an agency cannot specifically determine all individual actions at the start of the notice period, it may issue general notices which shall later be supplemented by specific notices. The combined general and specific notice periods shall meet the requirements in § 351.801, and the combined contents of the general and specific notices shall meet the requirements in § 351.803.

§ 351.803 Content of notice.

(a) The notice shall state specifically the action to be taken and its effective date except as provided in paragraph (b) of this section; the employee's competitive area, competitive level, subgroup, service date, and annual performance ratings received during the last three years; the place where the employee may inspect the regulations and records pertinent to this case; the reasons for retaining a lower-standing employee in the same competitive level under

§ 351.607 or § 351.608; the information on reemployment rights except as permitted by § 351.804; and the employee's right, as applicable, to grieve under a negotiated grievance procedure or to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) A general notice shall inform the employee that action under this part may be necessary but a specific action has not yet been determined. The notice shall state that as soon as the agency determines what action, if any, will be taken under this part the employee will receive specific notice of the action to be taken. The general notice shall contain an expiration date. A general notice may also include other information specified in paragraph (a) of this section.

§ 351.804 Notice concerning consideration for reemployment.

An employee who receives a specific notice of separation under this part must also be given information concerning the right to reemployment consideration under the provisions of Subparts B and C of Part 330 of this chapter. This information should be included in or with the specific reduction-in-force notice; otherwise, a separate supplemental notice covering this information must be given to the employee.

§ 351.805 Expiration of notice.

(a) An agency may cancel an unexpired general notice, or may renew it for additional periods within the maximum notice period referred to in § 351.801. A general notice expires as stated therein unless, on or before the expiration date, the employee receives a renewal of the general notice or a specific notice.

(b) A specific notice expires except when followed by the action specified, or by action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action. An agency may not take action before the effective date in the specific notice. An action taken after the specified date in the specified notice shall not be ruled invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for reduction in force as a result of the action or when it results in a notice period longer than the maximum allowed.

§ 351.806 New notice required.

An employee is entitled to a new written notice of at least 30 full days if the agency decides to take an action more severe than first specified.

§ 351.807 Status during notice period.

When possible, the agency shall retain the employee on active duty during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, on leave without pay with his or her consent, or in a nonpay status without his or her consent.

Subpart I—Appeals and Corrective Action

§ 351.901 Appeals.

An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction-in-force action may appeal to the Merit Systems Protection Board. Unless the presiding official determines that there are material issues of fact in dispute that would require a hearing for resolution, the review of an agency action shall be confined to the written record.

§ 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

PART 352—REEMPLOYMENT RIGHTS

Nomenclature Change: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

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SOURCE: 33 FR 12433, Sept. 4, 1968, unless otherwise noted.

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Subpart B—Reemployment Rights Based on Movement Between Executive Agencies During Emergencies

AUTHORITY: 5 U.S.C. 3101 note, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

§ 352.201 Letter of Authority.

(a) *Definition.* A Letter of Authority is an authorization from OPM to an agency appointing officer to grant reemployment rights.

(b) *Scope of authority.* A Letter of Authority shall specify the conditions under which it may be used, including the types of positions covered and the organizational and geographic areas to which it is restricted.

(c) *Time limit of authority.* A Letter of Authority shall remain in force for one year from date of issuance unless earlier revoked by OPM. Renewals or extensions will not be issued unless justified by exceptional circumstances.

§ 352.202 Request for Letter of Authority.

When an agency believes that an emergency situation is so critical as to justify offers of reemployment rights, it may request OPM to issue a Letter of Authority. In submitting the request the agency shall present its justification in terms of the standards provided in § 352.203.

§ 352.203 Standards for issuing Letters of Authority.

OPM will determine the standards to be used in issuing Letters of Authority, which shall include the following:

(a) The positions to be filled must be related to emergency situations for which the usual recruiting methods are inadequate.

(b) The positions must be a part of a specific program immediately essential to the national interest.

(c) The positions must be essential to the functioning of the program.

(d) There must be substantial basis for the belief that reemployment rights will be a significant and reasonable aid in meeting the emergency situation.

§ 352.204 Basic eligibility for reemployment rights.

(a) *Employees eligible.* The following employees in the executive branch of the Government are eligible to be granted reemployment rights when they are hired by another executive agency without break in service of a full workday by transfer or reinstatement, or by excepted appointment, in a position which the agency is currently authorized to fill with reemployment rights:

(1) An employee serving in a competitive position under a career or career-conditional appointment;

(2) A nontemporary excepted employee.

(b) *Employees not eligible.* The following employees are not eligible to be granted reemployment rights:

(1) An employee serving a trial or probationary period;

(2) An employee serving in an obligated position;

(3) An employee serving with reemployment rights granted under this subpart;

(4) An employee who has received a notice of involuntary separation because of reduction in force or otherwise; or

(5) An employee who has already submitted a resignation.

§ 352.205 Appeal of losing agency.

An appointing officer who intends to employ with reemployment rights an employee of another executive agency shall give the losing agency written notice at least 15 calendar days before the effective date of the proposed action. If the losing agency believes the grant of reemployment rights would be detrimental to the public interest, it may appeal the proposed grant to OPM within 15 calendar days after receipt of the notice. The losing agency, at the same time, shall furnish a copy of the appeal to the prospective appointing officer, who shall withhold the proposed grant pending decision on the appeal. OPM shall determine whether the employee will be given reemployment rights and notify both agencies accordingly. If the losing agency does not appeal within 15 calendar days, the employee shall be granted reemployment rights.

§ 352.205a Authority to return employee to his/her former agency.

The transfer of an employee with a grant of reemployment rights under this subpart authorizes the return of the employee to his/her former agency without regard to Parts 351, 752, or 771 of this chapter when the employee is reemployed in his/her former agency—

(a) Without a break in service of 1 workday or more in a position at the same or higher grade in the same occupational field and in the same geographical area as the position he/she last held in the former agency; and

(b) At not less than the rate of pay he/she would have been receiving in the position last held in the former agency if he/she had not been transferred.

[45 FR 83472, Dec. 19, 1980]

§ 352.206 Expiration of reemployment rights.

Reemployment rights granted under a Letter of Authority expire at the end of 2 years following the date of the personnel action, unless exercised or otherwise terminated before that time, except that the reemployment rights of an employee serving outside the continental United States extend for an additional period of 3 months.

§ 352.207 Exercise or termination of reemployment rights.

(a) *Exercise.* The time limits for application for reemployment under this subpart are:

(1) Within 30 calendar days before the expiration of the term of reemployment rights;

(2) Within 30 calendar days after receipt of notice of involuntary separation;

(3) At least 30 calendar days in advance of the person's scheduled entry into active military duty. In this case he shall be reemployed and separated, furloughed, or granted leave of absence for military service by the reemploying agency; or

(4) At any time before the expiration of the term of reemployment rights with the written consent of the current employing agency if application for reemployment is made within 30 days after date of separation, or after receipt of advance notice of proposed demotion by the current employing agency.

(b) *Termination.* An employee's reemployment rights terminate if:

(1) He fails to apply within the time limits stated in paragraph (a) of this section;

(2) He resigns without the written consent of the current employing agency; or

(3) Within 10 calendar days, he fails to accept an offer of reemployment made under § 352.208 which is determined to be a proper offer of reemployment by the reemploying agency or by the Merit Systems Protection Board on appeal.

§ 352.208 Agency's obligation to reemploy.

(a) *Employee's right to reemployment.* An employee is entitled to be reemployed by the reemploying agency as promptly as possible, but not more than 30 calendar days after receipt of his application. The employee is entitled to reemployment in the occupational field and at the same grade or level and in the same geographical area as the position which the employee last held in that agency. If the reemployment would cause the separation or demotion of another employee, the applicant shall then be considered an employee for the purpose of applying the reduction-in-force regulations to determine to what, if any, position he is entitled.

(b) *Reemployment in a higher grade.* The reemploying agency may reemploy the employee in a position of higher grade than that to which he is entitled, but not if this reemployment would cause the displacement of another employee.

(c) *Seniority in postal service.* On reemployment in the postal service, the employee is entitled to the seniority he would have attained had he remained in the postal service.

(d) *Basis for agency refusal to reemploy.* An agency may refuse to reemploy under this section only when the employee was last separated for serious cause evidencing his unsuitability for reemployment.

§ 352.209 Employee appeals to the Merit Systems Protection Board.

When an agency denies reemployment to a person claiming reemployment rights under this subpart, the agency shall inform him or her of that denial by a written notice. In the same notice, the agency shall inform him/her of his/her right to appeal to the

Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(5 U.S.C. 7701, et seq.)

[44 FR 48952, Aug. 21, 1979]

Subpart C—Detail and Transfer of Federal Employees to International Organizations

AUTHORITY: 5 U.S.C. 3584; E.O. 11552, 3 CFR, 1966-1970 Comp., p. 954.

SOURCE: 35 FR 16525, Oct. 23, 1970, unless otherwise noted.

§ 352.301 Purpose.

The purpose of this subpart is to encourage details and transfers of employees for service with international organizations as authorized by sections 3343 and 3581-3584 of title 5, United States Code, and to provide procedures for participation in the program.

§ 352.302 Definitions.

In this subpart:

(a) "Agency," "employee," "international organization," and "transfer" have the meaning given them by section 3581 of title 5, United States Code;

(b) "Detail" has the meaning given it by section 3343 of title 5, United States Code; and

(c) "Term of employment" means not more than (1) 5 consecutive years of employment, except that when the Secretary of State determines it to be in the national interest, the detail or transfer may be extended up to an additional 3 years, or (2) the period of less than 5 years specified at the time of consent to transfer or detail, beginning with entrance on duty in the international organization.

§ 352.303 Effective date of equalization allowance.

Section 352.310 applies to employment with an international organization that occurs after December 29, 1969.

§ 352.304 International organizations covered.

Without prior approval of OPM, an agency may detail or transfer an employee under this subpart to any organization which OPM has designated in the Federal Personnel Manual as an international organization. An agency may detail or transfer an employee under this subpart to any other public international organization or international organization preparatory commission, only when OPM, after consultation with the Department of State, agrees that the organization concerned could be designated in the Federal Personnel Manual as an international organization covered by sections 3343 and 3581 of title 5, United States Code.

§ 352.305 Eligibility for detail.

An employee is eligible to be detailed to an international organization with the rights provided for in, and in accordance with, section 3343 of title 5, United States Code, and this subpart.

§ 352.306 Length of details.

A detail or series of details shall not exceed 5 consecutive years, except that when the Secretary of State, on the recommendation of the head of the agency, determines it to be in the national interest, the 5-year detail may be extended for up to an additional 3 years. A detail or series of details or combination of details and transfers shall not exceed 8 years in the aggregate.

§ 352.307 Eligibility for transfer.

An employee is eligible for transfer to an international organization with the rights provided for in, and in accordance with, sections 3581-3584 of title 5, United States Code, and this subpart, except the following:

(a) A Presidential appointee (other than a postmaster, a Foreign Service officer or a Foreign Service information officer), regardless of whether his appointment was made by and with the advice and consent of the Senate.

(b) A person serving in the executive branch in a confidential or policy-determining position excepted from the competitive service under Schedule C of Part 213 of this chapter, or in a position authorized to be filled by noncareer executive assignment or limited executive assignment under Part 305 of this chapter.

(c) A person serving under a temporary appointment pending establishment of a register.

(d) A person serving under an appointment specifically limited to 1 year or less.

(e) A person serving on a seasonal, intermittent, or part-time basis.

§ 352.308 Effecting employment by transfer.

(a) *Authority to approve transfers.* On written request by an international organization for the services of an employee, the agency may authorize the transfer of the employee to the organization for any period not to exceed 5 years, except that when the Secretary of State determines it to be in the national interest, a period of employment by transfer may be extended, subject to the approval of the head of the agency, for up to an additional 3 years. A transfer or series of transfers or combination of details and transfers shall not exceed 8 years in the aggregate. Refusal by the head of the agency to authorize the transfer or the extension of the transfer is not reviewable by or appealable to OPM.

(b) *Letter of consent.* When an agency consents to the transfer of an employee, the agency shall give its consent in writing to the international organization and shall furnish the employee with a copy of the consent.

(c) *Effective date.* The agency and the international organization shall establish the effective date of transfer by mutual agreement.

(d) *Recording requirement.* The agency shall furnish the employee with a statement of his leave account when he is separated for transfer. In addition, the agency shall include on the personnel action form effecting the employee's separation for transfer, (1) identification of the international organization to which he transfers, (2) a clear statement of the period during which he has reemployment rights in the agency under section 3582 of title 5, United States Code, and this subpart, and of the legal and regulatory conditions of his reemployment.

§ 352.309 Retirement, health benefits, and group life insurance.

(a) *Agency and employee action.* At the time of consent to the transfer of an employee, the agency shall notify the employee in writing that it will make agency contributions and he will retain coverage with resulting rights and benefits under the retirement, health benefits, and group life insurance systems or any of them if employee payments are currently deposited in the respective funds. The employee shall acknowledge, in writing, receipt of the notice and state whether or not he wishes to retain his coverage under the retirement, health benefits, and group life insurance systems or any of them by continuing required employee payments.

(b) *Agency responsibility.* A transferred employee is deemed to remain an employee of the agency from which transferred for retirement, health benefits, and group life insurance purposes. For retirement and group life insurance purposes, the agency is responsible for determining the applicable rate of pay in accordance with the provisions of section 3583 of title 5, United States Code. The agency is also responsible for collecting, accounting for, and depositing in the respective funds all retirement, health benefits, and group life insurance employee payments required to be made for the purpose of protecting the rights of the employee so transferred; and for accounting for and depositing in the respective funds all agency contributions. The agency shall furnish the employee with specific information as to how, when, and where the payments are to be submitted.

(c) *Coverage.* Employee payments are currently deposited if received by the agency before, during, or within 3 months after the end of the pay period covered thereby. Failure to deposit the payment currently terminates a transferred employee's retirement, health benefits, and group life insurance coverage on the last day of the pay period for which payments were currently deposited, subject to a

31-day extension of group life insurance and health benefits coverage as provided in Parts 870 and 890 of this chapter and to the conversion benefits provided in Parts 870 and 890 of this chapter. Coverage so terminated may not attach again before the employee actually enters on duty on his first day in a pay status in an agency. However, terminated civil service retirement, health benefits, and group life insurance coverage shall be reinstated retroactively when, in the judgment of OPM, the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments were deposited at the first opportunity. Coverage under a system other than the civil service retirement system shall be reinstated retroactively if the agency which administers the retirement system determines that the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments were deposited at the first opportunity.

§ 352.310 Equalization allowance.

(a) An employee transferred to an international organization is entitled to be paid in accordance with paragraphs (a)(1) through (4) of this section, an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organizations and the pay, allowances, post differential, and other monetary benefits that would have been paid by the agency had he been detailed to the international organization under section 3343 of title 5, United States Code, (i) on reemployment; or (ii) on his death which occurs during the period of transfer or during the period after separation from an international organization when he is exercising or could exercise his reemployment rights.

(1) To determine the difference, the Department of State defines pay (i) for the Federal Government, as the amount paid an employee before the deduction of State and local taxes, but after the deduction of hypothetical U.S. Federal tax using the standard deduction considering the number of exemptions and appropriate tax table prescribed by the Department; (ii) for international organizations following the Common System of Salaries and Allowances of the United Nations and Specialized Agencies, as the amount actually paid to the employee after the deduction of the Staff Assessment; (iii) for other international organizations, as the amount actually paid to the employee. In cases where pay is subject to State and local taxes, this shall be the pay before the deduction of the taxes.

(2) Allowances, post differential, and other monetary benefits are defined by the Secretary of State as follows:

(i) *Federal Government:* The amount that would have been paid under sections 5921-5925 of title 5, United States Code, applicable provisions of chapters 100, 200, and 500 of the Standardized Regulations (Government Civilians Foreign Areas) and implementing agency regulations had the employee been detailed to the international organization under section 3343 of title 5, United States Code;

(ii) International organizations following the Common System of Salaries and Allowances of the United Nations and Specialized Agencies: The amount paid under pertinent provisions of the Staff Regulations and Rules of the United Nations and the Specialized Agencies;

(iii) Other international organizations not under the Common System of Salaries and Allowances of the United Nations and Specialized Agencies: The amount paid under pertinent conditions of service applied by the organizations as determined to be appropriate by the releasing agency with the concurrence of the Secretary of State.

(3) Travel and subsistence expenses, transportation of effects, and leave are not considered monetary benefits for purposes of this section.

(4) In exceptional circumstances where a hardship or an inequity would otherwise occur the Secretary of State, on the recommendation of the head of the agency, may specify allowances or other monetary benefits in lieu of or in addition to those specified above.

(b) Authoritative information on pay, allowances, post differential, and other monetary benefits as defined in paragraph (a) of this section for the Federal Government and the international organizations is maintained currently by the Department of State and is made available on request to any Federal department, agency, or employee concerned.

(c) Agency and employee responsibilities for reporting and documenting payments received from international organizations are specified in the Federal Personnel Manual.

[35 FR 16525, Oct. 23, 1970, as amended at 40 FR 1223, Jan. 7, 1975]

§ 352.311 Reemployment.

A transferred employee is entitled to be reemployed in his former position or one of like seniority, status, and pay within 30 days of his application for reemployment if he meets the following conditions:

(a) He is separated, either voluntarily or involuntarily, within his term of employment with the international organization; and

(b) He applies for reemployment to his former agency or its successor not later than 90 days after his separation.

§ 352.312 When to apply.

An employee may apply for reemployment either before or after separation by the international organization. If he applies before separation, the 30-day period prescribed in § 352.311 begins either within the date of the application or 30 days before the employee's date of separation, whichever is later.

§ 352.313 Failure to reemploy and right of appeal.

(a) When an agency fails to reemploy an employee within 30 days of his/her application, it shall notify him/her in writing of the reasons and of his/her right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) If the agency fails to reach and issue a decision to the employee within 30 days from his/her application for reemployment, the employee is entitled to appeal the failure of the agency to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) An appeal alleging that the agency has failed to comply with any of the other provisions of sections 3343 and 3581-3584 of title 5, United States Code, or of this part may be submitted to the Merit Systems Protection Board under the provisions of the Board's regulations.

(5 U.S.C. 7701, et seq.)

[44 FR 48952, Aug. 21, 1979]

§ 352.314 Consideration for promotion.

(a) Each agency shall consider each employee detailed or transferred to an international organization for all promotions for which he would be considered were he not absent. A promotion based on this consideration is effective on the date it would have been made if the employee were not absent.

(b) When the position of an employee absent on detail or transfer to an international organization is regraded upward during his absence, his agency shall place him in the regraded position.

Subpart D—Employment of Presidential Appointees and Elected Officers by the International Atomic Energy Agency

AUTHORITY: Sec. 6(c), 71 Stat. 455; 22 U.S.C. 2025(c); E.O. 10774, 3 CFR, 1954-1958 Comp., p. 418, as amended by E.O. 10804, 3 CFR, 1959-1963 Comp., p. 328.

§ 352.401 Purpose.

The purpose of this subpart is to implement section 6(b) of the International Atomic Energy Agency Participation Act of 1957 and Executive Order 10774 as amended by Executive Order 10804 to protect the civil service rights and privileges, wherever appropriate, of Presidential appointees and elected officers who leave their positions and within 90 days enter employment with the International Atomic Energy Agency.

§ 352.402 Coverage.

This subpart applies to all officers, as defined in § 352.403(b), of any branch of the Federal Government.

§ 352.403 Definitions.

In this subpart:

(a) "Agency" means the International Atomic Energy Agency;

(b) "Officer" means any Presidential appointee or elected officer who leaves his position after August 27, 1957, and within 90 days enters employment with the agency; and

(c) "Term of employment" means not more than 3 consecutive years of employment beginning with entrance on duty in the agency.

§ 352.404 Retirement and insurance.

(a) *Coverage.* (1) To obtain retirement benefits for a term of employment with the agency, an officer covered by subchapter III of chapter 83 of title 5 United States Code, within 90 days after the date he is separated from the agency, shall pay to OPM all necessary employee deductions and agency contributions for coverage under that subchapter for his term of employment with the agency. Interest shall not be charged an officer on any payment of necessary employee deductions and agency contributions. The amount of the employee deductions so paid shall be added to the officer's lump-sum credit in the Civil Service Retirement and Disability Fund.

(2) To retain coverage under chapter 87 of title 5, United States Code, during his term of employment with the agency, an officer covered by that chapter shall currently pay employee deductions and agency contributions necessary for coverage under that chapter for his term of employment with the agency. Collections may be made under procedures which may be determined in accordance with written agreements reached between accounting representatives of OPM and the agency.

(3) All retirement and insurance benefits and obligations shall be computed in the same manner as if the rate of basic pay the officer was receiving on the last day he was in his Federal position before employment with the agency had continued without change.

(4) An officer not covered by either subchapter III of chapter 83, or chapter 87, of title 5, United States Code, in the Federal position which he last held or from which he separates to enter employment with the agency does not acquire coverage or benefits under these statutes based on employment with the agency.

(b) *Death coverage.* An officer who dies during his term of employment or within 90 days of his separation therefrom is deemed to have died in the Federal Service.

§ 352.405 Resumption of Federal service.

(a) *Pay increase.* An officer who is reemployed in the Federal position which he left or one of life seniority, status and pay within 90 days of his separation from the agency following a term of employment is entitled to the rate of basic pay to which he would have been entitled had he remained in the Federal service.

(b) *Sick leave account.* An officer shall have any sick leave account which he may have had in his last Federal position reestablished for credit or charge, if he returns to an appropriate leave system within 52 calendar weeks after the date he is separated from his term of employment with the agency.

(c) *Service credit for agency employment.* An officer who is reemployed in the Federal service within 90 days after completion of his term of employment with the agency is entitled to credit as Federal service for his term of employment with the agency. However, OPM shall give service credit for subchapter III of chapter 83 of title 5, United States Code, purposes only if the officer complies with the requirements of § 352.404(a)(1).

Subpart E—Reinstatement Rights After Service Under Section 233(d) and 625(b) of the Foreign Assistance Act of 1961

AUTHORITY: Sec. 625, 75 Stat. 449; 22 U.S.C. 2385; E.O. 10973, 3 CFR 1959-1963 Comp., p. 493.

§ 352.501 Purpose.

This subpart governs reinstatement authorized by sections 233(d) and 625(b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. sec. 2193(d) and 22 U.S.C. sec. 235(b)).

[36 FR 13897, July 28, 1971]

§ 352.502 Coverage.

This subpart applies to any of the following serving in a position in the Federal Government:

(a) A person serving in the competitive service under a career or career-conditional appointment.

(b) A person serving in the excepted service under an appointment without a specific time limitation.

(c) A person appointed or assigned under authority of the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.).

§ 352.503 Definitions.

In this subpart:

(a) "Act" means the Foreign Assistance Act of 1961, as amended (22 U.S.C. sec. 2151 et seq.); and

(b) "Former position" means the position that an employee was occupying at the time of his appointment to a position under authority of section 233(d) or section 625(b) of the Act.

[36 FR 13897, July 28, 1971]

§ 352.504 Basic entitlement.

Subject to the conditions specified in this subpart, an employee who is appointed to a position under authority of section 233(d) or section 625(b) of the Act is entitled, on termination of that appointment for any reason other than his own misconduct or delinquency, to be reinstated in his former position or in one of life seniority, status, and pay in the same agency. If the functions with which the employee's former position was identified have been transferred to another agency, the employee's right to reinstatement is in the gaining agency.

[36 FR 13897, July 28, 1971]

§ 352.505 Proposed termination.

At least 45 days before termination of the appointment of an employee entitled to reinstatement, the agency terminating the employee shall notify the employee and his former agency in writing of the proposed termination. However, notification under this section is not required when:

(a) The termination is at the employee's own request; or

(b) The employee is reinstated without a break in service under an arrangement made between the agencies concerned.

§ 352.506 Application for reinstatement.

An employee who desires reinstatement shall apply for reinstatement, in writing, no later than 30 days after his appointment under authority of section 233(d) or section 625(b) of the Act is terminated, unless arrangement has been made for his reinstatement without a break in service under § 352.505(b).

[36 FR 13897, July 28, 1971]

§ 352.507 Reinstatement.

An employee eligible for reinstatement is entitled to be reinstated as soon as possible after his application for reinstatement, filed in accordance with § 352.506, is received. In any event, he is entitled to be reinstated (a) within 30 days after his application for reinstatement is received, or (b) on termination of the appointment made under authority of section 233(d) or section 625(b) of the act, whichever is later.

[36 FR 13897, July 28, 1971]

§ 352.508 Appeals to the Merit Systems Protection Board.

(a) If an agency determines that an employee who has applied for reinstatement is not eligible for reinstatement, it shall notify the employee as promptly as possible of its decision, of the basis therefor, and of the employee's appeal rights under this subpart. The employee is entitled to appeal the decision to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) If an agency fails to reinstate an employee within the time limits specified in § 352.507, the employee is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) If an employee considers that his reinstatement is not in accordance with the act and this subpart, he or she is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

(5 U.S.C. 7701, et seq.)

[44 FR 48952, Aug. 21, 1979]

Subpart F—Reemployment Rights After Service in the Economic Stabilization Program

AUTHORITY: Sec. 212(g) of Economic Stabilization Act of 1970 (85 Stat. 751; Pub. L. 92-210) and E.O. 11695, 3 CFR 1971-1975 Comp., p. 741.

SOURCE: 38 FR 2327, Jan. 24, 1973, unless otherwise noted.

§ 352.601 Purpose.

This subpart governs reemployment rights authorized by section 212(g) of the Economic Stabilization Act of 1970, as amended (85 Stat. 751, Pub. L. 92-210, the Act) after service in the Economic Stabilization Program carried out under the Act.

§ 352.602 Eligibility for reemployment rights.

(a) *Employees eligible.* Except as provided in paragraph (b) of this section, an employee in the executive branch of the Government (including the United States Postal Service) or the Government of the District of Columbia may be granted reemployment rights under this subpart if he is serving under one of the following types of appointment and is hired under the Economic Stabilization Program without a break of one full workday by transfer, reinstatement, or excepted appointment:

(1) A career or career-conditional appointment in the competitive service;

(2) A career executive assignment or limited executive assignment under Part 305 of this chapter; or

(3) An appointment without a specific time limitation in the excepted service.

(b) *Employees not eligible.* An employee is not eligible for reemployment rights under this subpart if he:

(1) Is serving a trial or probationary period;

(2) Is serving in an obligated position;

(3) Is serving with reemployment rights granted under Subpart B of this part.

(4) Has received a specific notice, with or without an offer of another position, of separation because of reduction in force or otherwise; or

(5) Has submitted a resignation.

§ 352.603 Consideration for promotion.

(a) Entitlement: An employee with reemployment rights under this subpart shall be considered by his former agency for all promotions for which he would be considered were he not serving under the Economic Stabilization Program. A promotion based on this consideration is effective on the date it would have been made if the employee were not absent.

(b) When the position an employee last held in his former agency is regarded upward while he is serving under the Economic Stabilization Program with reemployment rights under this subpart, his former agency shall place him in the regraded position.

§ 352.604 Position to which entitled on reemployment.

(a) *Basic entitlement.* On reemployment, an employee is entitled to be appointed to a position in his former agency in the following order:

(1) To the position to which promoted in absentia under § 352.603, or if that position is not available, to a position at the same or higher grade, in the same occupational field, and in the same geographical area.

(2) To the position he last held in his former agency or, if that position is not available, to a position in the same occupational field and in the same geographical area.

(b) *Reemployment in a different position.* An employee's former agency may reemploy him in a position of higher grade than the one to which he is entitled under paragraph (a) of this section. With the employee's concurrence, he may be reemployed in a different location or in a different position than the one to which he is entitled under paragraph (a) of this section.

(c) *Grade and rate at which returned.* An employee's former agency shall give every possible consideration to retaining the salary equivalent of the grade and rate attained under the Economic Stabilization Program. The agency is strongly encouraged to reemploy the employee at the grade and rate attained under the program. The head of the former agency shall report to the Director of the Cost of Living Council within 30 days of reemployment any instance where current pay is not retained and the reasons.

§ 352.605 Authority to return employee to his former agency.

(a) *Authority.* An employee granted reemployment rights under this subpart may be returned to his former agency without regard to Parts 351, 752, 771, and 772[1] of this chapter when this return is—

(1) Without a break in service of one workday or more;

(2) To a position to which reemployment is provided by § 352.604; and

(3) At not less than the rate of pay he would have been receiving in the position he last held in his former agency or in the position to which he was promoted in absentia, if he had not been transferred.

(b) *Date of return.* An employee is to be returned to his former agency with reemployment rights under this subpart only on a date set by the Economic Stabilization agency after consultation with the former agency. Unless the former agency agrees to an earlier date, the date of return shall be set by the Economic Stabilization agency at least 14 calendar days after the former agency is notified of the intention to return the employee. In any event, the employee shall be returned no later than 3 years after the date of his appointment under the Economic Stabilization Program with reemployment rights under this subpart.

[38 FR 2327, Jan. 24, 1973; 38 FR 3390, Feb. 6, 1973]

§ 352.606 Termination of reemployment rights.

The reemployment rights of an employee terminate if he leaves the Economic Stabilization Program by resignation or by transfer to another agency, including his former agency if the transfer is not made on a date set by the Economic Stabilization agency under § 352.605.

§ 352.607 Appeals to the Merit Systems Protection Board.

If an employee considers that he/she has been improperly reemployed or has been improperly denied reemployment to which the employee considers he/she is entitled under this subpart, the employee may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

(5 U.S.C. 7701, et seq.)

[44 FR 48953, Aug. 21, 1979]

§ 352.608 Applicability to employees serving on effective date.

The provisions of this subpart shall take the place of those in Subpart B of this part for an employee appointed to the Economic Stabilization Program after December 21, 1971, and serving in the program on the effective date of this subpart with reemployment rights granted under Subpart B of this part.

Subpart G—Reemployment Rights of Former Bureau of Indian Affairs and Indian Health Service Employees After Service Under the Indian Self-Determination Act in Tribal Organizations

AUTHORITY: Sec. 105(i), Pub. L. 93-638, 88 Stat. 2210 (25 U.S.C. 450); E.O. 11899, 41 FR 3459.

SOURCE: 41 FR 27713, July 6, 1976, unless otherwise noted.

§ 352.701 Purpose.

This subpart governs reemployment rights authorized by section 105(i) of the Indian Self-Determination Act (88 Stat. 2210; Pub. L. 93-638, the Act) and E.O. 11899 after service in an Indian tribal organization under the Act.

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[1] Part 772 was removed (see 44 FR 44820, July 31, 1979, and 44 FR 46249, Aug. 7, 1979).

§ 352.702 Definitions.

In this subpart:

(a) "Agency" means the Bureau of Indian Affairs and the Indian Health Service. For reemployment purposes, the Public Health Service shall be considered the agency to which Indian Health Service employees may return.

(b) "Competitive area" is the same as defined in § 351.402 of this title.

(c) "Tribal organization" is defined in section 4(c) of the Indian Self-Determination Act (88 Stat. 2204).

§ 352.703 Basic entitlement to reemployment rights on leaving Federal employment.

(a) *Employees entitled.* The following employees of the Bureau of Indian Affairs, Department of the Interior, and the Indian Health Service, Public Health Service, Department of Health, Education, and Welfare, are granted reemployment rights subject to the conditions of this subpart, to the Bureau of Indian Affairs or the Public Health Service, as appropriate, if they leave their Federal employment to be employed, with no break in service following separation from their agency, by an Indian tribal organization to work in a function of their respective agency contracted under the Indian Self-Determination Act to be performed by that tribal organization:

(1) An employee serving in a competitive position under a career or career-conditional appointment and who has satisfactorily completed at least 6 months of a probationary period; or

(2) A non-temporary excepted service employee who has satisfactorily completed at least 6 months of a trial period if one is required by the agency.

(b) *Employees not entitled.* The following employees are not entitled to reemployment rights under this subpart:

(1) An employee who has received a notice of involuntary separation because of reduction in force, or other cause, not directly related to contracting under the Act to a tribal organization;

(2) An employee whose resignation has been accepted for reasons other than to accept tribal employment under this subpart; or

(3) An employee serving under a Schedule C excepted appointment or a noncareer executive assignment.

(c) *Not related to other benefits.* Entitlement to reemployment rights does not depend on continuation of Federal employee benefits coverage during service with a tribal organization.

§ 352.704 Duration of reemployment rights.

(a) *Termination of authority.* Rights are not granted to persons who leave Federal employment for employment with a tribal organization after the date (December 31, 1985, at present) specified in section 105(e) of the Indian Self-Determination Act (88 Stat. 2209).

(b) *Maximum period of entitlement.* Entitlement to reemployment terminates at the end of 6 years following the date employment commences in the tribal organization unless exercised or otherwise terminated before that time as provided in this subpart.

§ 352.705 Return to Federal employment.

(a) *Conditions.* Reemployment rights may be exercised only under the following conditions. The individual must apply in writing to the former employing agency for reemployment not later than 30 calendar days after:

(1) Receipt of notice of involuntary separation from tribal employment. For this purpose, involuntary separation means any separation against the will and without consent of the individual.

(2) Reversion of the function to Federal operation, whether reversion is through tribal or Federal action; or

(3) Separation with the joint consent of the tribal organization and the Federal agency for reasons of personal hardship or other special circumstances.

(b) *Termination.* A former employee's entitlement to reemployment terminates for:

(1) Failure to apply for reemployment within the time limit stated in paragraph (a) of this section;

(2) Resignation from tribal service without the joint consent, described in paragraph (a)(3) of this section, of the tribal organization and the Federal employer; or

(3) Failure to accept, within 10 calendar days of receipt thereof, an offer of reemployment made under § 352.706 which is determined by the employing agency or by the Merit Systems Protection Board on appeal to be a proper offer of reemployment.

§ 352.706 Agency response to reemployment application.

(a) *Employee's right to reemployment.* An employee is entitled to be reemployed by the reemploying agency as promptly as possible, and, in any event, within 45 calendar days after agency receipt of application.

(1) Within the competitive area the employee is entitled to reemployment in:

(i) The position held immediately before leaving the agency;

(ii) One in the same competitive level; or

(iii) Another position for which qualified and eligible at the same grade or level and in the same competitive area as the position the employee last held in the agency. The employing agency determines the position under paragraph (a)(1) (i), (ii), or (iii) of this section to which the employee is entitled. Reduction-in-force procedures shall be applied where necessary in determining the position to which the employee has a right. In applying the reduction-in-force regulations, the applicant shall be considered an employee of the agency.

(2) *Extending the area.* Responsibility for reemploying an applicant is nation-wide within the agency. If the applicant is not placed under paragraph (a)(1) of this section, the agency must extend reemployment rights, based on the employee's availability, for assignment outside the competitive area. The employee is entitled to a position, for which qualified and eligible, at the same grade or level as the position last held in the agency. Where necessary, reduction-in-force procedures shall be applied in determining the position to which the employee has a right. The applicant shall be considered an employee for the purpose of applying the reduction-in-force regulations.

(b) *Employee option.* Before the competitive area is extended under paragraph (a)(2) of this section, an employee who cannot be placed under paragraph (a)(1) of this section, in the competitive area at the same grade or level as the position last held is entitled, if the employee elects, to reemployment in a position at a lower grade or level identified under the same conditions and procedures as paragraph (a)(1) of this section.

(c) *Agency option.* At any stage in the process, the agency has the option to satisfy the employee's right to reemployment by offering a vacant position which, under reduction-in-force regulations, is in accord with the employee's rights. Also, with the employee's consent, right to reemployment can be met by placement in a vacant position, for which the employee is qualified according to agency determination, and available, outside the organizational or geographic area of entitlement, either at the appropriate grade or at a grade other than the one to which entitled.

(d) *Basis for agency refusal to reemploy.* An agency may refuse to reemploy when the employee was last separated from tribal employment for serious cause establishing unsuitability for reemployment.

(e) *Basis for agency inability to reemploy.* An agency may find it is unable to reemploy in the event no position can be found under procedures in this section.

§ 352.707 Employee appeals to the Merit Systems Protection Board.

(a) If an agency denies reemployment to a person claiming reemployment rights under this subpart, the agency shall inform the individual of that denial and of the reasons therefor by a written notice. In the same notice, the agency shall inform the employee of the right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) If an employee considers reemployment to be not in accordance with this subpart, the employee is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) Refusal of a tribe to hire a Federal employee is not appealable to the Merit Systems Protection Board.

(5 U.S.C. 7701, et seq.)

[44 FR 48953, Aug. 21, 1979]

Subpart H—Reemployment Rights Under the Taiwan Relations Act

AUTHORITY: 22 U.S.C. 3310, E.O. 12143, 44 FR 37191, unless otherwise noted.

SOURCE: 46 FR 8433, Jan. 27, 1981, unless otherwise noted.

§ 352.801 Purpose.

This subpart governs reemployment rights authorized by section 11(a) (1) and (2) of the Taiwan Relations Act (Pub. L. 96-8) after service in the American Institute in Taiwan (AIT) under the Act.

§ 352.802 Definitions.

For the purposes of this subpart:

"Act" refers to Taiwan Relations Act (Pub. L. 96-8).

"Competitive area" is the same as defined in section 351.402 of this title;

"Institute" means the American Institute in Taiwan.

"Specified period of service" shall be a period of not more than 6 years.

§ 352.803 Basic entitlement to reemployment rights on leaving Federal employment.

(a) This subpart applies to all executive agencies as defined in section 105 of title 5, United States Code, the U.S. Postal Service, the Postal Rate Commission, and to the employees thereof, and to those positions in the competitive civil service and the employees occupying those positions.

(b) The agency must give employees entitled to reemployment rights under this subpart written notice of these rights at the time of their separation.

(c) *Employees entitled.* The following employees or former employees are granted reemployment rights subject to the conditions of this subpart, if they leave their Federal employment to be employed (on the date of incorporation of AIT or within 30 calendar days following separation from their agency) by the Institute for a specified period of service.

(1) An employee serving in a competitive position under a career or career-conditional appointment;

(2) A non-temporary excepted service employee;

(3) An employee serving under a career appointment in the Senior Executive Service; or

(4) An employee serving in a career executive assignment under Part 305 of this chapter.

(d) *Employees not entitled.* The following employees are not entitled to reemployment rights under this subpart:

(1) An employee who has received a notice of involuntary separation because of reduction in force, or other cause, not directly related to employment with the Institute under the Act;

(2) An employee whose resignation has been accepted for reasons other than to accept employment with the Institute under this subpart,

(3) An employee serving under a Schedule C excepted appointment.

(4) An employee serving in a limited executive assignment or a noncareer executive assignment under Part 305 of this chapter; or

(5) An employee serving under a noncareer, limited emergency, or limited term appointment in the Senior Executive Service.

§ 352.804 Maximum period of entitlement to reemployment.

Entitlement to reemployment terminates at the end of 6 years and 30 days, following the date employment commences in the Institute unless exercised or otherwise terminated before that time as provided in this subpart.

§ 352.805 Position to which entitled on reemployment.

(a) *Basic position entitlement.* (1) On reemployment, an employee is entitled to be appointed to a position in the employee's former or successor agency in the following order:

(i) To the position last held in the former agency:

(A) If that position has been identified for transfer to a different agency, reemployment rights must be exercised with the gaining agency.

(B) If that position has been reclassified, the employee should be placed in the reclassified position;

(ii) A position in the same competitive level; or

(iii) Another position for which otherwise qualified at the same grade or level and in the same competitive area.

(2) *The employing agency determines under paragraph (a)(1) of this section the position to which the employee is entitled.* Reduction-in-force procedures shall be applied when necessary in determining the position to which the employee has a right. In applying reduction-in-force procedures, the applicant shall be considered an employee of the agency.

(3) *Extending the area.* Responsibility for reemploying an applicant is agencywide. If the applicant is not placed under paragraph (a)(1) of this section, the agency must extend reemployment rights, based on the agency's need, for assignment outside the competitive area. The employee is entitled to a position, for which qualified and eligible, at the same grade or level as the position last held in the agency. Where necessary, reduction-in-force procedures shall be applied in determining the position to which the employee has a right. The applicant shall be considered an employee for the purpose of applying the reduction-in-force procedures.

(b) *Employee option.* Before the competitive area is extended under paragraph (a)(3) of this section, an employee who cannot be placed under paragraph (a)(1) of this section in the same competitive area at the grade or level as the position last held, is entitled, if the employee elects, to reemployment in a position at a lower grade or level identified under the same conditions and procedures as paragraph (a)(1) of this section.

(c) *Agency option.* At any stage in the process, the agency has the option to satisfy the employee's right to reemployment by offering a vacant position which, under reduction-in-force regulations, is in accord with the employee's rights. Also, with the employee's consent, right to reemployment can be met by placement in a vacant position, for which the employee is qualified according to agency determination and need, outside the organizational or geographic area of entitlement, either at the appropriate grade or at a grade other than the one to which entitled.

(d) *Basic position entitlement in the Senior Executive Service.* (1) On reemployment, an employee (who meets the requirements to § 352.803(c)(3)) is entitled to be given a career appointment in the Senior Executive Service the employee's former or successor agency.

(2) The employee may be assigned to any position in the Senior Executive Service for which he/she meets the qualifications requirements.

(3) The employee may elect to accept reemployment in a position outside the Senior Executive Service. Such placement would be subject to the provisions of paragraphs (b) and (c) of this section.

§ 352.806 Return to Federal employment.

(a) *Conditions:* Reemployment rights may be exercised only under the following conditions. The employees must apply in writing to their former or successor agency:

(1) No less that 30 calendar days before completion of the specified period of service with the Institute; or

(2) No more than 30 calendar days after involuntary separation from the Institute; or

(3) No more than 30 calendar days after separation based on personal hardship or other special circumstances with the consent of Institute and former employing agency.

(b) An agency must act on the former employee's request for reemployment within 30 calendar days of receipt thereof, i.e., the agency must provide the employee with a written notice stating the agency's decision whether to reemploy and the position being offered, if the employee is to be reemployed.

(c) *Termination of reemployment rights.* A former employee's entitlement to reemployment terminates for:

(1) Failure to apply, except for good cause shown, for reemployment within the time limits stated in paragraph (a) of this section;

(2) Resignation from the Institute without the consent of the Institute or the former employing agency; or

(3) Failure to accept, within 15 workdays of receipt thereof, an offer of reemployment under § 352.803 which is determined to be a proper offer of reemployment by the employing agency and by Merit Systems Protection Board (MSPB), if appealed.

§ 352.807 Appeals.

An employee may appeal to MSPB, under the provisions of the Board's regulations, an agency's decision on his or her request for reemployment which he or she believes is in violation of this subpart.

(22 U.S.C. 3310, E.O. 12143, 45 FR 37452)

Subpart I—Reemployment Rights After Service With the Panama Canal Commission

AUTHORITY: Pub. L. 96-70, 22 U.S.C. 3643.

SOURCE: 50 FR 13963, Apr. 9, 1985, unless otherwise noted.

§ 352.901 Purpose.

This subpart implements section 1203 of the Panama Canal Act of 1979, which provides for the detail or transfer of Federal employees to the Panama Canal Commission with reemployment rights in the former agency.

§ 352.902 Definitions.

In this subpart—

"Act" means the Panama Canal Act of 1979 (22 U.S.C. 3601 *et seq.*).

"Agency" means an Executive agency, the United States Postal Service, and the Smithsonian Institution.

"Commission" means the Panama Canal Commission as established by section 1101 of the Act.

"Competitive area" is defined in § 351.402 of Part 351 of this chapter.

"Competitive level" is defined in § 351.403(a) of Part 351 of this chapter.

"Detail" is the assignment of loan of an employee to the Commission without the employee's transfer. The employee remains an employee of the agency in which employed and continues to be the incumbent of the position from which detailed.

"Term of employment" means the period of employment specified in the written agreement between the Commission and the agency for the transfer of an employee or extension of transfer.

"Transfer" means the change in appointment of an employee from an agency to a new appointment with the Commission.

§ 352.903 Effecting a detail or transfer.

(a) *Authority to approve.* The head of an agency may enter into written agreements with the Commission for the detail or voluntary transfer, for set periods of time, of agency employees to the Commission in accordance with section 3643 of title 22, United States Code, and this subpart. Refusal by the head of the agency to agree to a detail or transfer, or extension of detail or transfer, is not reviewable by the Office of Personnel Management or appealable.

(b) *Employee notice.* The agency will furnish the employee with a copy of the written agreement which must contain a statement of the time limits for exercising reemployment rights and the conditions of reemployment.

§ 352.904 Eligibility.

This subpart covers only eligible employees transferred or detailed to Commission positions with duty stations in the Republic of Panama.

(a) *Employees eligible.* Except as provided in paragraph (b) of this section, an employee serving in a position in an agency under any of the following appointments may be granted rights under this subpart:

(1) Career or career-conditional appointment in the competitive service;

(2) An appointment without a specific time limit in the excepted service; or

(3) A career appointment in the Senior Executive Service.

(b) *Employee not eligible.* The following employees are not eligible under this subpart:

(1) An employee who is serving a trial period or probationary period under an initial appointment;

(2) An employee who has received a proposed notice of involuntary separation (e.g., separation based on reduction in force, adverse action, or performance);

(3) An employee who is serving in a position excepted from the competitive service under Schedule C of Part 213 of this chapter, in a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter, or under Presidential appointment; or

(4) An employee whose resignation has been accepted for reasons other than to accept employment with the Commission.

§ 352.905 Employees on detail.

(a) An employee detailed to the Commission is subject to the same conditions of employment at his or her employing agency as if the employee has not been detailed.

(b) The Commission and the employing agency will arrange for the termination of a detail and the agency will return the employee to his or her former position or an equivalent one as provided in § 352.908 (b) and (c).

§ 352.906 Termination of transfer.

At the conclusion of a term of employment agreed upon as provided in § 352.903, employment with the Commission may be terminated without regard to Parts 351, 359, 432, 752, or 771 of this chapter.

§ 352.907 Exercise or termination of reemployment rights.

(a) *Exercise.* An individual who has been transferred under this subpart to the Commission and wishes to be reemployed must apply in writing to the former employing agency. The time limits for application for reemployment are—

(1) No later than 30 calendar days after the expiration of the term of employment with the Commission;

(2) No later than 30 calendar days after receipt of notice of involuntary separation during the term of employment with the Commission; or

(3) No later than 30 calendar days after resignation with the consent of the Commission.

(b) *Termination.* Reemployment rights terminate if the individual—

(1) Fails to apply within the time limits stated in paragraph (a) of this section;

(2) Resigns without the written consent of the Commission; or

(3) Within 10 calendar days, fails to accept an offer of reemployment made under § 352.908 that is determined to be a proper offer of reemployment by the reemploying agency or by the Merit Systems Protection Board on appeal.

§ 352.908 Agency obligation.

(a) *Time limits.* An employee is to be reemployed by the reemploying agency as promptly as possible, but not later than 30 calendar days after receipt of the reemployment application or on termination of the term of employment with the Commission, whichever is later.

(b) *Conditions.* An employee will be reemployed or returned from detail without loss of pay, seniority, or other rights or benefits to which the employee would have been entitled had he or she not been transferred or detailed. An employee in the Senior Executive Service will be reemployed or returned at not less than the rate at which paid immediately before the transfer or detail. An employee who is reemployed is not eligible for grade or pay retention under Part 536 of this chapter based on a grade or rate of pay attained while employed by the Commission.

(c) *Position to which entitled.*

(1) If the function with which the employee's former position was identified has been transferred, the employee's right is to a position in the gaining agency or activity.

(2) An employee whose right is to a position in the Senior Executive Service may be reemployed in or returned to any Senior Executive Service position in the former agency for which qualified.

(3) All other employees are entitled to be reemployed in or returned to a position at the same grade or level and in the same competitive area as the position last held in the former agency. If the reemployment would cause the separation or demotion of another employee, the applicant should be considered an employee for the purpose of applying the reduction-in-force regulations to determine to what, if any, position the employee is entitled. If the employee is not placed at the former grade or level, the agency must extend consideration beyond the competitive area. Responsibility for reemployment is agency-wide.

(4) Reemployment may be at a higher grade than that to which the employee is entitled if all appropriate standards and requirements are satisfied and if this will not cause the displacement of another employee.

(5) The reemployment obligation may be satisfied by placement in any position within the agency that is acceptable to the employee.

(d) *Agency refusal to reemploy.* An agency may refuse to reemploy under this section only when the employee was separated from the Commission for serious cause showing unsuitability for reemployment.

§ 352.909 Appeals.

(a) If an agency denies reemployment to an applicant who claims reemployment rights under this subpart, the agency must notify the applicant in writing of that denial and its reasons. In the same notice, the agency will inform the applicant of the right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

(b)(1) When an agency has reemployed or returned an employee, it will advise the employee of the right of appeal if he or she considers the reemployment or return not to be in accordance with the Act and this subpart.

(2) An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude this matter must use the negotiated grievance procedure.

(3) An employee to whom paragraph (b)(2) of this section does not apply is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

PART 353—RESTORATION TO DUTY

NOMENCLATURE CHANGE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

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Subpart E—Restoration Rights of TAPER Employees

353.501 Rights of TAPER employees.

AUTHORITY: 38 U.S.C. 2021, et seq., and 5 U.S.C. 8151, unless otherwise noted.

SOURCE: 40 FR 23836, June 3, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 353.101 Scope.

This part sets forth rights and obligations of employees and agencies in connection with restoration following (a) military duty subject to the provisions of 38 U.S.C. 2021, et seq. (formerly section 9 of the Military Selective Service Act of 1967, as amended), and (b) employee injuries subject to the provisions of 5 U.S.C. chapter 81, subchapter I.

§ 353.102 Definitions.

In this part:

(a) "Agency" means (1) any department, independent establishment, agency, or corporation in the executive branch, including the U.S. Postal Service and Postal Rate Commission, (2) the government of the District of Columbia, and (3) with respect to restoration following a compensable injury, any agency in the legislative and judicial branches or other employing organization listed in 5 U.S.C. 8101(1).

(b) "Leave of absence" means military leave, annual leave, leave without pay, continuation of pay, or any combination of these.

(c) "Military duty" means a period of (1) active duty for training or for service in the Armed Forces of the United States, (2) inactive duty training in the Armed Forces of the United States, and (3) active duty in the Public Health Service that is covered by 38 U.S.C. 2024(b). For the purpose of this paragraph, full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States, and inactive duty training performed by a member of the National Guard under 32 U.S.C. 502 or 37 U.S.C. 206(a) or 1002(a) is considered inactive duty training in the Armed Forces of the United States.

(d) "Injury" means a compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, and includes, in addition to accidental injury, a disease proximately caused by the employment.

(e) "Fully recovered" means compensation payments have been terminated on the basis that the employee is able to perform all the duties of the position he left or an equivalent one.

[40 FR 23836, June 3, 1975, as amended at 43 FR 2379, Jan. 17, 1978]

§ 353.103 Persons covered.

(a) The provisions of this part concerned with military duty cover each employee of an agency who enters on military duty from:

(1) A career or career-conditional appointment in the competitive service; or

(2) An appointment without time limitation in a position outside the competitive service.

(b) Subpart E of this part covers the restoration rights of TAPER employees.

(c) The provisions of this part concerned with employee injury cover the following persons:

(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, who was separated or furloughed from a position without time limitation as a result of a compensable injury;

(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(3) An individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber or logging operations on that reservation;

(4) An individual employed by the Government of the District of Columbia;

(5) An individual appointed to a position on the office staff of a former

President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(6) A Peace Corps Volunteer or Volunteer Leader; and

(7) Individuals enrolled in programs under title I of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113) for periods of service of at least 1 year; but do not include—

(i) A commissioned officer of the Regular Corps of the Public Health Service;

(ii) A commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(iii) A commissioned officer of the Environmental Science Services Administration; or

(iv) A member of the Metropolitan Police or the Fire Department of the District of Columbia who is pensioned or pensionable under § 521.535 of title 4, District of Columbia Code.

§ 353.104 Agency action at time employee enters on military duty.

Each employee who enters on active duty with restoration rights under sections 2021 or 2024 (a), (b), or (c) of title 38, United States Code, shall be either separated or furloughed, at the option of his agency, when he enters on military duty, except that an agency may elect to place a member of a reserve component of the Armed Forces or a member of the National Guard on leave of absence, instead.

§ 353.105 Agency action when an employee sustains a compensable injury.

Agencies should carry injured employees on leave without pay for at least the first year the employee is receiving injury compensation under 5 U.S.C. chapter 81. Extensions of such leave may be granted, if warranted, based on review of each individual case.

§ 353.106 Notification of rights and obligations.

An agency shall notify an employee who is separated, furloughed, or given leave of absence because of military duty or injury, of his rights, obligations, and benefits relating to his Government employment.

§ 353.107 Maintenance of records.

Each agency shall identify the position vacated by an employee who is injured or leaves to enter on military duty. It shall also maintain the necessary records to assure that all such employees are preserved the rights and benefits granted by this law and this part.

Subpart B—Agency Action in Employee's Absence

§ 353.201 Personnel actions.

(a) Each agency shall consider every employee absent because of compensable injury or military duty for all promotions for which he would be considered were he not absent. A promotion based on this consideration is effective on the date it would have been made if the employee were not absent.

(b) An agency shall place an employee whose position is regarded upward during his absence due to injury or military duty, in the regraded position.

(c) An agency may not demote or separate an employee absent on military duty. If the employee's position is abolished during his absence, the agency shall reassign him to another position of like seniority, status, and pay.

(d) An employee absent because of injury is subject to the same terms and conditions of employment as though he had not been injured.

§ 353.202 Transfer of function to another agency.

If the function with which an employee absent because of injury or military duty was associated at the time of his departure, is transferred to another agency and if the employee would have been transferred with the function under Part 351 of this chapter if he were not absent, the gaining agency shall retain the employee in his position or assign him to a position of like seniority, status, and pay. It shall also assume the obligation to restore the employee in accordance with law and this part.

§ 353.203 Abolishment of agency.

If an agency is abolished and its functions are not transferred to another agency, it shall furnish OPM a list of its employees absent because of injury or military duty. For each employee, the list shall state the employee's name, date of birth, position, grade, and pay, and the name of the organizational unit in which his position was located. The agency shall note in each employee's Official Personnel Folder that notification was made under this section.

Subpart C—Agency Obligation To Restore

§ 353.301 Extent of agency's obligation and how discharged.

When an employee is entitled to restoration under section 2021 or 2024 (a), (b), or (c) of title 38, United States Code, or to restoration or priority consideration under 5 U.S.C. 8151, the agency shall follow the requirements of this subpart.

[43 FR 2379, Jan. 17, 1978]

§ 353.302 Time limit for restoration.

(a) An employee returning from military duty is entitled to be restored as soon as possible after his application for restoration, filed in accordance with the requirements in law, is received in the agency but, in no event, later than 30 days after his application is received.

(b) An employee who has fully recovered from an injury or disability within 1 year after the date of commencement of compensation, or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States, is entitled to resume his or her former position (or an equivalent one) immediately upon cessation of compensation.

[40 FR 23836, June 3, 1975, as amended at 43 FR 2379, Jan. 17, 1978]

§ 353.303 Position to which restored.

An employee is entitled to be restored to employment in the following order, unless the position is occupied by an employee in a higher retention subgroup under Part 351 of this chapter:

(a) To the position to which promoted while he was injured or on military duty, or, if that position is not available, to a position of like seniority, status, and pay;

(b) To the position he left because of injury or military duty, or, if that position is not available, to a position of like seniority, status, and pay;

(c) To the next best available position for which he is qualified. For purposes of this paragraph, the next best available position is one that most nearly approximates in seniority, status, and pay the position to which an employee is entitled under either paragraph (a) or (b) of this section.

§ 353.304 Physical disqualification.

(a) A returning employee who, because of a disability sustained during military duty, is disqualified for a position to which he has restoration rights, is entitled to be restored to another position in the agency for which he is qualified that will provide him like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in his case.

(b) An employee who, because of compensable injury or disability, is disqualified for a position to which he has restoration rights (including an equivalent position) is entitled, within 1 year of the date he began receiving compensation, to be restored to another position in the agency for which he is qualified that will provide him like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in his case.

§ 353.305 Conflicting rights.

If two or more employees are entitled to be restored to the same position, the employee who left his position first is entitled to the prior right of restoration. Each other employee is entitled to be restored in accordance with the provisions of §§ 353.303 and 353.304.

§ 353.306 Partially recovered injured employees.

Agencies must make every effort to restore, according to the circumstances in each case, an employee or former employee who has partially recovered from a compensable injury and who is able to return to limited duty.

[44 FR 56683, Oct. 2, 1979]

§ 353.307 Injured employees who take longer than 1 year to recover.

An employee who was separated because of a compensable injury and whose recovery takes longer than 1 year from the date compensation began (or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States), is entitled to priority consideration for restoration to the position he or she left or an equivalent one provided he or she applies for reappointment within 30 days of cessation of compensation. (See Parts 302 and 330 of this chapter for more information on how this may be accomplished for the excepted and competitive services, respectively.)

[43 FR 2379, Jan. 17, 1978]

§ 353.308 Notice of right of appeal.

(a) When an agency refuses to restore, or determines that it is not feasible to restore an employee under the provisions of law and this part, it shall notify the employee in writing of the reasons for its decision and of his or her right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title and shall forward a copy of the notice to the Board.

(b) When an agency restores an employee it shall notify the employee that he or she is being restored in accordance with the requirements of § 353.303. The agency shall also inform the employee that he or she is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(5 U.S.C. 7701, et seq.)

[44 FR 48953, Aug. 21, 1979]

Subpart D—Appeals

§ 353.401 Appeals to the Merit Systems Protection Board.

(a) *Executive branch and District of Columbia Employees.* (1) An employee with a right to restoration under sections 2021 or 2024 (a), (b), or (c) of title 38 United States Code, or under 5 U.S.C. 8151 may appeal to Merit Systems Protection Board in furtherance of this right as follows:

(i) *Failure of restoration.* If, after proper notification by the employee of his/her desire to exercise his/her restoration rights, the agency concerned fails to restore the employee within the time limits specified by law and in this part, the employee may appeal to the Board under the provisions of the Board's regulations.

(ii) *Not feasible to restore.* If the agency concerned decides that it is not feasible to restore an employee, he or she may appeal this decision to the Board under the provisions of the Board's regulations.

(iii) *Refusal of restoration.* If the agency concerned refuses to restore an employee, the employee may appeal to the Board under the provisions of the Board's regulations.

(iv) *Improper restoration.* If an employee considers that he or she has been improperly restored, the employee may appeal to the Board under the provisions of the Board's regulations.

(2) An employee who left a position in an agency with right to return to his position under sections 2024(d) or 2024(e) of title 38, United States Code, may appeal to the Merit Systems Protection Board in furtherance of his right to return to work in accordance with the provisions of such sections and this part.

(3) Injured employees who partially recover may appeal to the MSPB for a determination of whether their agencies are acting arbitrarily and capriciously in denying them restoration. Injured employees who fully recover more than 1 year after they begin receiving compensation may appeal as

provided for in Parts 302 and 303 of this chapter.

(b) *Other employees.* An employee of another branch who is entitled by law to appeal to the Merit Systems Protection Board may do so under the provisions of the Board's regulations.

(c) *Former agency abolished.* If the Executive branch or District of Columbia agency in which an employee was employed when he or she left for military duty or was injured is abolished and its functions are not transferred to another agency, the employee is entitled to request that the Office find him or her employment.

(5 U.S.C. 7701, et seq.)

[40 FR 23836, June 3, 1975, as amended at 43 FR 2379, Jan. 17, 1978; 44 FR 48953, Aug. 21, 1979; 45 FR 46778, July 11, 1980]

Subpart E—Restoration Rights of TAPER Employees

§ 353.501 Rights of TAPER employees.

(a) *General.* Subject to the exceptions set forth in paragraph (b) of this section an employee serving in a position in the competitive service under a temporary appointment pending establishment of a register under § 316.201 of this chapter (other than an employee serving in grades GS-16, GS-17, or GS-18), is entitled to rights equivalent to those provided for employees covered by sections 2021 and 2024 of title 38, United States Code, or 5 U.S.C. 8151, and subparts A through D of this part apply to a TAPER employee.

(b) *Exceptions.* (1) Sections 353.203 and 353.401(a)(1)(v) do not apply to a TAPER employee.

(2) The right of restoration of a TAPER employee is restricted to the geographical area in which the installation he left because of military duty or injury is located.

(3) The prohibitions in section 2021(b)(1) and section 2024(c) of title 38, United States Code, against discharging employees without cause within 1 year or 6 months respectively after restoration from military duty do not apply to a TAPER employee; restoration of a TAPER employee may not cause his employment to extend beyond the date it would otherwise be terminated.

(4) A TAPER employee who cannot be restored in his former agency does not have the right to restoration in another agency that nontemporary employees have.

PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

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AUTHORITY: 5 U.S.C. 1302, Pub. L. 95-454, unless otherwise noted.

SOURCE: 44 FR 44815, July 31, 1979, unless otherwise noted.

Subpart A—Principal Statutory Requirements

§ 359.101 Principal statutory requirements.

This subpart sets forth for the benefit of the user the statutory requirements governing removal (other than an action subject to subchapter V of chapter 75 of title 5, United States Code), reinstatement, and guaranteed placement with regard to the Senior Executive Service. (5 U.S.C. 3591-3595)

"§ 3591. DEFINITIONS

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', 'senior executive', 'career appointee', 'limited term appointee', 'limited emergency appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of this title.

"§ 3592. REMOVAL FROM THE SENIOR EXECUTIVE SERVICE

"(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

"(1) during the 1-year period of probation under section 3393(d) of this title, or

"(2) at any time for less than fully successful executive performance as determined under Subchapter II of Chapter 43 of this title,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing.

"(b) (1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to remove the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any removal under section 4314(b)(3) of this title; or

"(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

"(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

"§ 3593. REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

"(a) A former career appointee may be reinstated, without regard to section 3393 (b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

"(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

"(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under Subchapter II of Chapter 43 of this title.

"(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

"§ 3594. GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

"(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(b) A career appointee—

"(1) who has completed the probationary period under section 3393(d) of this title; and

"(2) who is removed from the Senior Executive Service for less than fully successful executive performance as determined under Subchapter II of Chapter 43 of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(c) (1) For purposes of subsections (a) and (b) of this section—

"(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS-15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

"(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

"(i) the rate of basic pay in effect for the position in which placed;

"(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

"(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

"(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

"(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.

"§ 3595. REGULATIONS

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.".

Subpart B—General Provisions

§ 359.201 Regulatory requirements.

Subparts B through I contain the regulations of the Office of Personnel Management which implement subchapter V of chapter 35 of title 5, United States Code.

§ 359.204 Definitions.

"Agency," "Senior Executive Service position," "senior executive," "career appointee," "limited term appointee," "limited emergency appointee," "noncareer appointee," and "general position" are defined in 5 U.S.C. 3132(a).

"Probationary period" means the 1-year probation required by 5 U.S.C. 3393(d) upon initial career appointment to the Senior Executive Service.

Subpart C—[Reserved]

Subpart D—Removal of Career Appointees During Probation

§ 359.401 Removal: Unacceptable performance or conduct.

(a) *Actions covered.* This section covers the removal of a career appointee from the Senior Executive Service during probationary period for unacceptable executive performance or conduct.

(b) *Procedures.* The agency shall notify the career appointee in writing prior to the effective date of the action. The notice shall, as a minimum—

(1) State the inadequacies of the appointee's executive performance or conduct;

(2) State whether the appointee has placement rights under § 359.701 and, if so, identify the position to which the appointee will be assigned; and,

(3) Show the effective date of the action.

§ 359.402 Removal: Conditions arising before appointment.

(a) *Actions covered.* This section covers the removal of a career appointee from the Senior Executive Service during the probationary period based in whole or in part on conditions arising before the appointment.

(b) *Procedures.* The agency shall give the career appointee an advance notice stating the specific reasons for the removal. The appointee shall be given a reasonable time to reply. The agency shall give the appointee a written decision showing the reasons for the action and the effective date. When appropriate, the notice of decision shall state the appointee's placement rights under § 359.701 and identify the position to which the appointee will be assigned. The notice of decision shall be given to the appointee at or before the time the action will be made effective.

§ 359.403 Restriction: Removal during probation.

(a) A removal from the Senior Executive Service under § 359.401 or § 359.402 may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) This restriction does not apply to a disciplinary action initiated before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor.

§ 359.405 Appeals: Removal during probation.

(a) An action taken under § 359.401 or § 359.402 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

(b) A violation of the restrictions in § 359.403 is a prohibited personnel practice within the meaning of 5 U.S.C. 2302. An allegation of such violation may be submitted by the appointee to the Special Counsel of the Merit Systems Protection Board.

Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance

§ 359.501 Removal: Causes: Less than fully successful executive performance.

(a) *Employees covered.* This section covers:

(1) Any career appointee who has completed the probationary period in the Senior Executive Service; and

(2) Any career appointee who is not required to serve a probationary period in the Senior Executive Service.

(b) *Evaluation of executive performance.* The agency shall appraise the performance of each career appointee in accordance with a performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code.

(c) *Optional removal from the Senior Executive Service.* The agency may remove a career appointee from the Senior Executive Service after the appointee has been given one unsatisfactory rating under the agency's performance appraisal system.

(d) *Mandatory removal from the Senior Executive Service.* The agency shall remove a career appointee from the Senior Executive Service after:

(1) The appointee has been given two annual summary ratings of unsatisfactory under the agency's performance appraisal system within five consecutive years; or

(2) The appointee has been given two annual summary ratings of less-than-fully-successful under the agency's performance appraisal system within three consecutive years.

§ 359.502 Removal: Procedures: Less than fully successful executive performance.

(a) *Notice.* The agency shall notify the career appointee in writing at least 30 calendar days before the effective date of the action. The notice shall advise the appointee of—

(1) The basis for the action;

(2) The appointee's placement rights under § 359.702 and the position to which the appointee will be assigned;

(3) The appointee's right to request an informal hearing from the Merit Systems Protection Board;

(4) The effective date of the removal action; and

(5) When applicable, the appointee's eligibility for immediate retirement under 5 U.S.C. 8336(h).

(b) *Informal hearing.* (1) A career appointee being removed from the Senior Executive Service under this section shall, at least 15 days before the effective date of the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board. The appointee shall submit the request for an informal hearing to the Merit Systems Protection Board. This request may be made at any time after the appointee has received the notice described in paragraph (a) of this section, but no later than 15 days before the effective date of action. The informal hearing shall be conducted in accordance with the regulations and procedures established by the Merit Systems Protection Board.

(2) Neither the granting nor the conduct of this informal hearing shall provide a basis for appeal to the Merit Systems Protection Board under 5 U.S.C. 7701. The removal action need not be delayed as a result of the granting of such informal hearing.

§ 359.503 Restrictions: Mandatory removal.

A removal from the Senior Executive Service under § 359.501(d)(2) may not be made effective within 120 days after—

(a) The appointment of a new agency head; or

(b) The appointment in the agency of the career appointee's most immediate supervisor who—

(1) Is a noncareer appointee; and

(2) Has the authority to remove the career appointee.

§ 359.505 Appeals: Removal for less than fully successful executive performance.

(a) An action taken under § 359.501 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

(b) A violation of the restrictions in § 359.503 is a prohibited personnel practice within the meaning of 5 U.S.C. 2302. An allegation of such violation may be submitted by the appointee to the Special Counsel of the Merit Systems Protection Board.

Subpart F—Removal of Other Than Career Appointees

§ 359.601 Removal: Other than career appointees.

(a) *Coverage.* This section covers the removal from the Senior Executive Service of limited emergency appointees, limited term appointees, and noncareer appointees.

(b) *Authority.* The agency may remove an appointee subject to this section at any time.

(c) *Notice.* The agency shall notify the appointee in writing prior to the effective date of the removal.

(d) *Placement rights.* An appointee covered by this section is not entitled to the placement rights provided for career appointees by 5 U.S.C. 3594.

(e) *Appeals.* Actions taken under this section are not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

Subpart G—Guaranteed Placement

§ 359.701 Placement rights: Removal during probation.

(a) *Coverage.* This section covers career appointees—

(1) Who are removed from the Senior Executive Service during probation for reasons other than misconduct, neglect of duty or malfeasance; and

(2) Who at the time of appointment to the Senior Executive Service held a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office).

(b) *Placement.* (1) An appointee covered by this section is entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency which is—

(i) A continuing position at GS-15 or above, or equivalent;

(ii) Of tenure equivalent to that of the appointment held at the time of appointment to the Senior Executive Service; and

(iii) A position for which the appointee meets the qualifications requirements.

(2) The agency taking the removal action shall be responsible for placing the appointee in an appropriate position within the agency, or for arranging a transfer to an appropriate position in another agency, in which case, the transfer must be mutually acceptable to the appointee and the gaining agency.

(c) *Restriction.* Placement of an appointee under this section shall not cause the separation or reduction in grade of any other employee.

(d) *Pay.* A career appointee placed under this section shall be entitled to receive basic pay at the highest of:

(1) The rate of basic pay in effect for the position in which he or she is being placed;

(2) The rate of basic pay currently in effect for the position which the appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(3) The rate of basic pay in effect for the appointee immediately before his or her removal from the Senior Executive Service.

§ 359.702 Placement rights: Removal for less than fully successful executive performance.

(a) *Coverage.* This section covers career appointees—

(1) Who have completed the required probationary period under the Senior Executive Service or who are not required to serve a probationary period; and

(2) Who are removed from the Senior Executive Service for less than fully successful executive performance.

(b) *Placement.* (1) An appointee covered by this section is entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency which is—

(i) A continuing position at GS-15 or above, or equivalent; and

(ii) A position for which the appointee meets the qualifications requirements.

(2) In addition, an appointee covered by this section who at the time of appointment to the Senior Executive Service held a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office) is entitled to be placed in a position of tenure equivalent to that of the appointment held at the time of appointment to the Senior Executive Service. This requirement does not apply—

(i) If the agency taking the removal action does not have positions of equivalent tenure; and/or

(ii) If the appointee is willing to accept a position having a different tenure.

(3) The agency taking the removal action shall be responsible for placing the appointee in an appropriate position within the agency, or for arranging a transfer to an appropriate position in another agency, in which case, the transfer must be mutually acceptable to the appointee and the gaining agency.

(c) *Restriction.* Placement of an appointee under this section shall not cause the separation or reduction in grade of any other employee.

(d) *Pay.* A career appointee placed under this section shall be entitled to receive basic pay at the highest of:

(1) The rate of basic pay in effect for the position in which he or she is being placed;

(2) The rate of basic pay currently in effect for the position which the appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(3) The rate of basic pay in effect for the appointee immediately before his or her removal from the Senior Executive Service.

Subpart H—Furloughs in the Senior Executive Service

AUTHORITY: 5 U.S.C. 3133 and 3136.

SOURCE: 48 FR 11925, Mar. 2, 1983, unless otherwise noted.

§ 359.801 Agency authority.

This subpart sets the conditions under which an agency may furlough career appointees in the Senior Executive Service. The furlough of a noncareer, limited term, or limited emergency appointee is not subject to this subpart. The furlough of a reemployed annuitant holding a career appointment also is not subject to the subpart.

§ 359.802 Definitions.

For the purpose of this subpart, "furlough" means the placing of an appointee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

§ 359.803 Competition.

Any furlough for more than 30 calendar days shall be made under competitive procedures established by the agency. The procedures shall be made known to the SES members in the agency.

§ 359.804 Length of furlough.

A furlough may not extend more than one year. It may be made only when the agency intends to recall the appointee within one year.

§ 359.805 Appeals.

A career appointee who has been furloughed and who believes this subpart or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

§ 359.806 Notice.

(a) An appointee is entitled to a 30 days' advance written notice of a furlough. The full notice period may be shortened, or waived, only in the event of unforseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities.

(b) The written notice shall advise the appointee of:

(1) The reason for the agency decision to take the furlough action.

(2) The expected duration of the furlough and the effective dates;

(3) The basis for selecting the appointee for furlough when some but not all Senior Executive Service appointees in a given organizational unit are being furloughed;

(4) The reason if the notice period is less than 30 days;

(5) The place where the appointee may inspect the regulations and records pertinent to the action; and

(6) The appointee's appeal rights, including the time limit for the appeal and the location of the Merit Systems Protection Board office to which the appeal should be sent.

§ 359.807 Records.

The agency shall preserve all records relating to an action under this subpart for at least one year from the effective date of the action.

PART 410—TRAINING

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410.101 Definitions.

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Subpart I—Reports and Interchange of Training Information

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410.902 Interchange of training information.

AUTHORITY: 5 U.S.C. 4118; E.O. 11348, 3 CFR, 1967 Comp., p. 275, unless otherwise noted.

SOURCE: 33 FR 16431, Nov. 9, 1968; 34 FR 2479, Feb. 21, 1969, unless otherwise noted.

Subpart A—General Provisions

§ 410.101 Definitions.

In this part:

(a) "Government," "agency," "employee," "training," "Government facility," and "non-Government facility" have the meanings given to these terms by section 4101 of title 5, United States Code.

(b) "Training by, in, or through Government facilities" means training that is conducted (1) by civilian or military personnel of the Government acting in their official capacities, and (2) on property owned or substantially controlled by the Government. All other training is "training by, in, or through non-Government facilities."

(c) "Interagency training" means training provided by one agency for other agencies or shared by two or more agencies.

(d) "State" and "local government" have the meanings given to these terms by section 4762 of title 42, United States Code.

[33 FR 16431, Nov. 9, 1968; 34 FR 2479, Feb. 21, 1969, as amended at 36 FR 13201, July 16, 1971]

Subpart B—Determining Training Needs

§ 410.201 Review of training needs.

(a) In conducting the reviews of training needs required by section 4113 of title 5, United States Code, and by Executive Order 11348, an agency shall consider periodically, but not less often than annually:

(1) Its program to identify training needed to bring about more effective performance at the least possible cost;

(2) Training needs of individual employees as related to the program objectives of the agency; and

(3) Its short- and long-range program needs by occupations, organizations, or other appropriate groups.

(b) Reviews shall be conducted in such manner as the agency finds best to meet the requirements of chapter 41 of title 5, United States Code, Executive Order 11348, and this part, and to provide sound bases for planning the training to be provided thereunder.

Subpart C—Establishing Training Programs

§ 410.301 Scope and general conduct of training programs.

(a) The head of an agency shall determine the policies which are to govern the training of employees of the agency. These policies shall be set forth in writing and include a statement of the broad purposes for which training will be given and of the assignment of responsibilities for seeing that these purposes are achieved.

(b) The head of an agency also shall take such administrative action as is necessary to assure that:

(1) Plans and programs are developed to meet the short- and long-range training needs of the agency;

(2) Priorities are established for the training programs of the agency;

(3) Provision is made for the use of funds and staff hours in accordance with established priorities, for the training programs of the agency;

(4) Employee self-development is fostered through a work environment in which self-development is encouraged, self-study materials are reasonably available, and self-initiated improvement in performance is recognized; and

(5) Information with respect to the general conduct of the training program of the agency is available to enable the Office, the President, and Congress to discharge their respective responsibilities under chapter 41 of title 5, United States Code.

(c) Training programs established by the agencies under chapter 41 of title 5, United States Code, to the maximum extent feasible:

(1) Be based on short- or long-range needs, existing or reasonably foreseeable;

(2) Meet as many of these needs as possible, priority considered;

(3) Use work assignment flexibility to provide experience to promote employee growth for the purpose of increasing the quality and quantity of work produced; and

(4) Be integrated with other personnel management and operating activities.

(d) As provided in subsection (b) of section 4103 of title 5, United States Code, an agency may train any employee of the agency to prepare the employee for placement in another agency when the following conditions are met:

(1) The head of the agency must determine that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of title 5, United States Code;

(2) Before undertaking any training under this section, the head of the agency shall obtain verification from the Office that there exists a reasonable expectation of placement in another agency;

(3) In selecting an employee for training under this section, the head of the agency shall consider:

(i) The extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

(ii) The employee's capability to learn skills and acquire knowledge and abilities needed in the new position; and

(iii) The benefits to the Government which would result from retaining the employee in the Federal service.

(5 U.S.C. 4103)

[44 FR 44814, July 31, 1979]

§ 410.302 Selection and assignment of trainees.

(a)(1) Except as provided by paragraph (a)(2) of this section, an agency must follow its merit promotion procedures when selecting a career or career-conditional employee for training which is: (i) Part of an authorized training agreement; (ii) part of a promotion program; or (iii) required before an employee may be considered for a promotion.

(2) Paragraph (a)(1) of this section does not apply if (i) the agency's merit promotion procedures have already been applied or (ii) the training is associated with a promotion not covered by those procedures.

(b) With respect to selection and assignment of employees to training by, in, or through non-Government facilities, the head of an agency shall provide that each assignment of an employee who is stationed within the continental limits of the United States to training outside these limits be approved by a specifically designated official at the headquarters level of the agency.

(c) The head of an agency shall prescribe such procedures as are necessary to assure that the selection of employees for training is made without regard to race, color, religion, sex, national origin, age, or other factors unrelated to the need for training.

(5 U.S.C. 4101 *et seq.*)

[47 FR 935, Jan. 8, 1982]

§ 410.303 Utilization of trainees.

An agency, in effecting position changes, shall consider significant training and self-development activities undertaken by employees.

§ 410.304 Evaluation of training.

An agency shall evaluate the results and effects of training under chapter 41 of title 5, United States Code. This evaluation shall be conducted in such manner and with such frequency as the agency head considers appropriate.

Subpart D—Interagency Training

§ 410.401 Establishment and utilization of interagency training.

(a) An Agency shall extend training programs developed for its own employees to employees of other agencies (and to employees of Federal organizations excepted by section 4102 of title 5, United States Code) when this would result in better training, improved service, or savings to the Government.

(b) An agency shall assign its employees to available interagency training when this would result in better training, improved service, or savings to the Government.

Subpart E—Training Through Non-Government Facilities

§ 410.501 Determining the source of training.

(a) The training of employees may be authorized only after the head of the agency concerned has determined whether adequate training is reasonably available from Government facilities. If adequate training is reasonably available from Government facilities, the agency shall train the employees by, in, or through Government facilities. If adequate training is not reasonably available from Government facilities, the agency shall train the employees by, in, or through non-Government facilities. The head of an agency will determine that adequate training is not reasonably available within the Government when either of the following conditions is met:

(1) Existing agency programs will not adequately meet the need, new programs cannot be established in time to meet the need, and reasonable inquiry has failed to disclose the availability of suitable and adequate programs elsewhere in the Government; or

(2) The training programs of Government facilities would be more expensive, because of the costs of distance, time, or other factors, than the training programs of non-Government facilities which are adequate to meet the need.

(b) In making the determinations required by paragraph (a) of this section, the head of the agency may follow the procedures of the Office of Management and Budget Circular No. A-76, Revised (March 29, 1979) "Policies for Acquiring Commercial or Industrial Products Needed by the Government." However, the provisions of the circular shall be modified as follows to comply with the limitations in this part on training by, in, or through non-Government facilities.

(1) Despite any provision of the circular to the contrary, an agency may not acquire training from Government or non-Government facilities unless the head of the agency has first performed a cost comparison or otherwise made the determination required by paragraph (a) of this section.

(2) In lieu of the circular's provisions for activities under the $100,000 threshold, the Office of Personnel Management shall prescribe, as part of the Federal Personnel Manual, simplified procedures for cost comparison studies of training facilities, existing and planned, whose annual operating costs are less than $100,000. These simplified procedures for cost comparisons shall be consistent with cost accounting principles represented in the circular.

(3) No contract may be awarded for training under this section which would cause the agency to exceed the limitation in section 4106(a)(1) of title 5, United States Code, unless the head of the agency has waived that limitation under § 410.506(a) of this part.

(4) After consultation with the Office of Federal Procurement Policy, Office of Management and Budget, the Office of Personnel Management may approve procedures other than

those of the circular for making the determinations required by paragraph (a) of this section, if alternative procedures are likely to improve the economy, validity or reliability of those determinations.

(5 U.S.C. 4101 *et seq.*)

[45 FR 48097, July 18, 1980]

§ 410.502 Selection of non-Government facilities for training.

(a) An agency shall use as the principal criterion for selection of non-Government training facilities the ability of the facilities to meet the training needs of the agency effectively, economically, and in timely fashion.

(b) An agency shall not allow training in a non-Government facility that discriminates because of race, color, religion, or national origin in the admission or in the subsequent treatment of students.

§ 410.503 General prohibitions, training through non-Government facilities.

(a) An agency may not authorize the training of an employee through a non-Government facility for the purpose of making a promotion if another employee within the agency is:

(1) Equal in ability and suitability;

(2) Fully qualified to fill the position; and

(3) Available within a reasonable distance from the position location.

(b) To assure adherence to the constraint of paragraph (a) of this section, the agency head shall establish policies and procedures he or she considers reasonable and necessary relating to areas of consideration and to determinations concerning:

(1) Ability;

(2) Suitability;

(3) Availability;

(4) Qualifications; and

(5) Geographic location.

(c) An exception to the constraint of paragraph (a) of this section, is granted for training an employee under the authority of 5 U.S.C. 5364.

(d) An exception to 5 U.S.C. 4107(c)(1) is provided to employees trained under the authority of 5 U.S.C. 5364 if:

(1) The career ladder of the new occupation does not provide a greater potential for promotion than the occupation from which the employee was downgraded; and

(2) The new position is at or below the employee's retained grade.

(e) When training by, in, or through a non-Government facility exceeds 120 hours in a single program, or is used to prepare an employee for a different occupational series, the head of the agency must determine, before authorizing the training, that the functions for which the training would be needed cannot be assumed by other employees.

(5 U.S.C. 4101, *et seq.*, 5364)

[45 FR 18365, Mar. 21, 1980, as amended at 47 FR 935, Jan. 8, 1982]

§ 410.504 Prohibiton of training through non-Government facilities advocating overthrow of the Government by force or violence.

The head of the agency shall make the determination that payments for training by, in, or through a non-Government facility are not in violation of section 4107(a) (1) and (2) of Title 5, United States Code.

(5 U.S.C. 4101 *et seq.*)

[45 FR 51755, Aug. 5, 1980]

§ 410.505 Continuous civilian service.

For the purpose of applying section 4106(a) (2) and (3) of title 5, United States Code, continuous civilian service includes periods of service in a nonpay status.

§ 410.506 Waiver of limitations on training of employees through non-Government facilities.

(a) The head of an agency may waive the limitation in section 4106(a)(1) of title 5, United States Code, if cost comparison studies under § 410.501 of this part demonstrate that such a waiver is in the public interest because the training available from non-Government facilities is as effective as, and less costly than, training available from Government facilities.

(b) Subject to chapter 41 of title 5, United States Code, and this part, an employee having less than one year of current, continuous civilian service in the Government is eligible for training by, in, or through non-Government facilities on a finding by the head of his or her agency that postponement of the training until the employee has completed one year of current, continuous civilian service in the Government would be contrary to the public interest.

(c) The head of an agency may waive the limitations in section 4106(a) (1) and (3) of title 5, United States Code, for:

(1) An employee assigned to training by, in, or through a non-Government facility that does not exceed 40 hours within a single program;

(2) An employee receiving training provided by a manufacturer as a part of the normal service incident to initial purchase or lease of its products under procurement contract; and

(3) An employee receiving training through a correspondence course.

(d) The head of an agency may waive the limitation in section 4106(a)(3) of title 5, United States Code for individual employees when the following conditions are met:

(1) The employee is serving under a career or career-conditional appointment or an appointment without time limitation in the excepted service;

(2) The training would not cause the total amount of the employee's training through non-Government facilities in the current decade of service to exceed two years; and

(3) A record of use of the authority is to be inserted in the employee's Official Personnel Folder, showing:

(i) A description of the training in terms of its substance (e.g., hydrology), level (e.g., graduate), and facility to be used;

(ii) The amount of training through non-Government facilities already received in the employee's current decade of service which counts toward the limitation;

(iii) The period for which the waiver is required (specifying month and year in which it is to begin and end);

(iv) If the training is primarily for application to a future assignment, a description of its major duties;

(v) The projected beginning of the employee's next decade of service; and

(vi) A statement of that agency's reasons for believing that application of the limitation would be contrary to the public interest, including a description of the effect of postponement of the training's completion until the next decade of service.

(e) The head of an agency may waive the limitation in section 4106(a)(3) of title 5, United States Code, for an employee serving in a career-related work-study program when all of the following conditions are met:

(1) The employee is serving under a Schedule B appointment which allows the agency to carry the employee on its rolls during the non-work periods of the program and adequate opportunity for the employee to fulfill the obligation to continue in the service of the agency as required by section 4108 of title 5, United States Code;

(2) Graduate education shall not be covered by the waiver;

(3) The employee's expenses of college training that are being paid are limited to the expenses covered by section 4109(a)(2) of title 5, United States Code; and

(4) Information is recorded in the employee's Official Personnel Folder, recording the waiver, the nature of the program (e.g., Federal Junior Fellowship), and the length of training encompassed by the program.

(5 U.S.C. 1104, 4101 *et seq.*; Pub. L. 95-454, sec. 3(5))

[44 FR 55133, Sept. 25, 1979, as amended at 45 FR 48098, July 18, 1980]

§ 410.507 Computing time in training through non-Government facilities.

For the purpose of chapter 41 of title 5, United States Code, and this part:

(a) An employee assigned to full-time training by, in, or through a non-Government facility is counted as being in training the same number of hours he is in a pay status during the training assignment, up to a maximum of 8 hours a day or 40 hours a week. If the employee is not in pay status during the training, he is counted as being in training the same number of hours as are in the period of any leave granted for the purpose of the training.

(b) An employee assigned to training by, in, or through a non-Government facility on less than a full-time basis is counted as being in training the same number of hours he spends in class or with the instructor in the facility.

(c) OPM may authorize such other procedures for the counting of the time in training as it considers appropriate.

§ 410.508 Agreements to continue in service.

(a) For the purpose of administering section 4108 of title 5, United States Code:

(1) There must be a written continued service agreement before assignment to training by, in, or through a non-Government facility unless the training meets the conditions of paragraph (b) or (c) of this section;

(2) The time the employee must agree to serve must be at least three times the length of the training period in non-Government facilities except as provided in paragraph (d) of this section;

(3) The period of time an employee is required to agree to continue in the service of the agency begins on the first workday after the end of the training covered by the agreement and does not include any service in nonpay status except for service in nonpay status which is at the agency's convenience; and

(4) "Additional expenses incurred by the Government in connection with his training" means expenses of training paid under section 4109(a)(2) of title 5, United States Code, but not salary, pay, or compensation.

(b) An employee selected for training by, in, or through a non-Government facility that involves no expense to the Government other than his or her pay is excepted from the requirement in section 4108(a) of title 5, United States Code, for entering into a written agreement.

(c) The head of the agency may except from the requirement in section 4108(a) of title 5, United States Code, for entering into a written agreement:

(1) An employee selected for training not in excess of 80 hours (short-term training) provided by a manufacturer as a part of the normal service incident to initial purchase or lease of a product under a procurement contract;

(2) An employee selected for training by, in, or through a non-Government facility that does not exceed 80 hours within a single program; and

(3) An employee selected for training which is given through a correspondence course.

(d) When an agency pays only the expenses of an employee's training that are authorized by section 4109(a)(2) of title 5, United States Code, the head of the agency may reduce to 1 month or to a period equal to the length of the training period covered by the payment, whichever is greater, the period of time the employee is required by section 4108(a) of title 5, United States Code, to agree to continue in the service of his or her agency.

((5 U.S.C. 4101 *et seq.*)

[48 FR 29669, June 28, 1983]

§ 410.509 Failure to fulfill agreements to continue in service.

(a)(1) Each written agreement required under section 4108(a) of title 5, United States Code, shall specify that the employee must repay the additional expenses if he or she voluntarily separates from the Government. The percentage of the additional expenses to be repayed may not exceed the proportion of the agreement not completed. The agency shall provide procedures to enable the employee to obtain a reconsideration of the amount to be recovered or to appeal for a waiver of the agency's right to recover.

(2) Except as provided in paragraph (a)(3) of this section, when the employing agency receives a request for transfer to another Government agency of an employee subject to an agreement, it will notify the gaining agency that the employee is still subject to a continued service agreement and transfer the agreement to the gaining agency. The gaining agency must then assure that the agreement is fulfilled.

(3) If the employing agency finds that the employee would not use the training in the new position, it must give the employee notification before the effective date of the transfer of its intention to recover the additional expenses. The agency must provide an opportunity for the employee to respond to the agency findings that he or she would not use the training in the new position before it can proceed to recover the appropriate amount of training expenses. The percentage of

the additional expenses recovered cannot exceed the proportion of the agreement not completed. The completion of recovery relieves the employee of the obligation to continue in the service of the Government.

(b) The head of an agency, or a representative especially designated by him or her for this purpose, must provide procedures for an employee's response to an agency request for repayment of the additional expenses and for an employee's appeal for a waiver of the agency's right of recovery under section 4108(c) of title 5, United States Code, before the agency can recover the appropriate payment and may waive, in whole or in part, the right of the agency to recover when he or she finds that:

(1) The employee has completed most, but not all, of the required period of service;

(2) The employee resigned because of his or her own illness or the serious illness of a member of his or her immediate family; or

(3) The employee is unable to make payment because of severe financial hardship.

(5 U.S.C. 4101 *et seq.*)

[48 FR 29669, June 28, 1983]

§ 410.510 Exceptions to the constraints on the usage of non-Government training.

When training meets two of the following conditions, then the agency is excepted from counting the time spent in such training toward the constraints in 5 U.S.C. 4106(a)(1), 5 U.S.C. 4106(a)(2) and 5 U.S.C. 4106(a)(3) and from the requirement in 5 U.S.C. 4108(a):

(a) Conducted by civilian or military personnel of the Government acting in their official capacities; or

(b) Held on property owned or substantially controlled by (rented by or loaned to) the Government; or

(c) Controlled by the government in terms of general level, coverage, content and requirements for participation.

(5 U.S.C. 4101 *et seq.*)
[45 FR 40963, June 17, 1980]

Subpart F—Payment of Training Expenses

§ 410.601 Determination of necessary expenses of training.

The head of an agency shall determine which expenses constitute necessary training expenses under section 4109 of title 5, United States Code.

§ 410.602 Prohibition on payment of premium pay.

(a) Except as provided by paragraph (b) of this section, no funds appropriated or otherwise available to an agency may be used for the payment of premium pay to an employee engaged in training by, in, or through Government facilities or non-government facilities.

(b) The following are excepted from the provision in paragraph (a) of this section prohibiting the payment of premium pay:

(1) An employee given training during a period of duty for which he or she is already receiving premium pay for overtime, night, holiday, or Sunday work, except that this exception does not apply to an employee assigned to full-time training at institutions of higher learning;

(2) An employee given training at night because situations which he or she must learn to handle occur only at night;

(3) An employee given training on overtime, on a holiday, or on a Sunday because the costs of the training, premium pay included, are less than the costs of the same training confined to regular work hours;

(4) An employee given training during periods of temporary assignment covered by § 550.162(c) of this chapter.

(5) An employee given training during a period not otherwise covered by a provision of this paragraph where premium pay is authorized by the employing agency as an exception from the provision in paragraph (a) of this section under authority delegated to it by the Office of Personnel Management; and

(6) An employee given training during a period not otherwise covered by a provision of this paragraph where premium pay is authorized by the Office of Personnel Management in

response to a request of the employing agency for an exception from the provision in paragraph (a) of this section.

(c) An employee who is excepted under paragraph (b) of this section is eligible to receive premium pay in accordance with the pay authorities applicable to him or her.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 55134, Sept. 25, 1979]

§ 410.603 Subsistence payments for extended training assignments.

(a) An agency has the authority to pay all or—if agreed to by the employee—a part of actual subsistence expenses of an employee assigned to training at a temporary duty station. If an agency makes such payments during an assignment lasting more than 30 calendar days, paragraph (b) or (c) of this section shall apply. The agreed rate of payment shall be applicable from the first day of the assignment. An agency may adjust an agreed rate of payment when circumstances so justify provided any decrease in the rate of payment is agreed to by the employee. If lodging or meal costs are included in the fees paid to the training institution an appropriate reduction shall be made from any standardized subsistence payments.

(b) When standardized subsistence payments are made:

(1) An agency may pay 55 percent of the full per diem rate specified by the Federal Travel Regulations or, if the training facility is in a designated high rate geographical area (HRGA), 55 percent of the prescribed maximum daily rate specified for that area by the Federal Travel Regulations; or

(2) Where an agency has large numbers of employees trained at facilities in a single area, the agency may make a standardized payment determined by the agency and based on survey data of actual subsistence expenses for that area, not exceeding the full per diem or the prescribed maximum HRGA rate specified for that area by the Federal Travel Regulations.

(c) When an agency decides to make other than standardized payments, it may pay all or a part of actual subsistence expenses including the cost of acceptable lodging and meals provided by the training facility or other nearby facility plus a Miscellaneous Subsistence Expenses payment. Any payment greater than the 55-percent rate authorized in paragraph (b)(1) may be made only after documentation of the circumstances (e.g., unavailability of acceptable lower cost lodging) leading the agency to the conclusion that the higher payment would be in the public interest. An agency shall not make any payment above the ceiling imposed by 5 U.S.C. 5702(c).

(5 U.S.C. 4101 et seq.)

[46 FR 40672, Aug. 11, 1981]

§ 410.604 Protection of Government's interests, incomplete training.

The head of an agency shall establish such procedures as he considers necessary to protect the Government's interest when employees fail to complete training for which the agency pays the expenses.

[33 FR 16431, Nov. 9, 1968; 34 FR 2479, Feb. 21, 1969. Redesignated at 46 FR 40672, Aug. 11, 1981]

§ 410.605 Records of training expenses.

An agency shall maintain records of payments made for travel, tuition and fees, and other necessary expenses of training by, in, or through non-Government facilities.

[33 FR 16431, Nov. 9, 1968; 34 FR 2479, Feb. 21, 1969. Redesignated at 46 FR 40672, Aug. 11, 1981]

Subpart G—Acceptance of Contributions, Awards, and Payments From Non-Government Organizations

§ 410.701 Scope.

(a) This subpart relates to contributions, awards, and payments made to employees, or on their behalf, by non-Government organizations in connection with training that the employees receive in non-Government facilities, or meetings that they attend, either (1) partially or wholly within periods when they are on duty; or (2) at such other times as their agencies pay the expenses of training or of attendance at meetings in whole or in part.

(b) This subpart does not limit the authority of a head of an agency to establish such procedures as he considers appropriate concerning the acceptance of contributions, awards, and payments in connection with any training and meetings that are outside the scope of this subpart.

§ 410.702 Authority of agencies to authorize acceptance.

The head of an agency or a representative designated by him for this purpose under § 410.703 may authorize in writing an employee of his agency to accept a contribution or award (in cash or in kind) incident to training in non-Government facilities or to accept payment (in cash or in kind) of travel, subsistence, and other expenses incident to attendance at meetings if the contribution, award, or payment is made either by an organization determined by the Secretary of the Treasury to be an organization described in section 501(c)(3) of title 26, United States Code, which is exempt from taxation under section 501(a) of that title or by an organization to which the prohibitions in section 209 of title 18, United States Code, do not apply, and if, in the judgment of the head of the agency or his designated representative, the following two conditions are met:

(a) The contribution, award, or payment is not a reward for services to the organization prior to the training or meeting; and

(b) Acceptance of the contribution, award, or payment:

(1) Would not reflect unfavorably on the ability of the employee to carry out his official duties in a fair and objective manner;

(2) Would not compromise the honesty and integrity of Government programs or of Government employees and their official actions or decisions;

(3) Would be compatible with the Code of Ethics for Government Service expressed in House Concurrent Resolution 175, 85th Congress, second session; and

(4) Would otherwise be proper and ethical for the employee concerned under the circumstances in his particular case.

§ 410.703 Delegation of authority to authorize acceptance.

The head of an agency may designate a representative to act for him in authorizing the acceptance of contributions, awards, and payments under § 410.702. Delegation of authority to act in this matter shall be held to as high an administrative level as practicable to assure that the policies of the agency head are reflected in each decision, and that there is full evaluation of the circumstances of each case in the light of the conditions set forth in § 410.702.

§ 410.704 Acceptance of contributions, awards, and payments.

An employee may accept a contribution, award, or payment (whether made in cash or in kind) that falls within the scope of this subpart only with specific written authorization granted under § 410.702.

§ 410.705 Identification of organization when more than one participates.

When more than one non-Government organization participates in making a single contribution, award, or payment, the "organization" referred to in this subpart is considered to be the one that selects the recipient and administers the funds from which the contribution, award, or payment is made.

§ 410.706 Records.

An agency shall maintain, in such form and manner as the head of the agency considers appropriate, the following records in connection with each contribution, award, or payment made and accepted under authority of this subpart: The name of the recipient; the name of the organization; the amount and nature of the contribution, award, or payment and the purpose for which it is to be used; and a copy of the written authorization required by § 410.702.

Subpart H—[Reserved]

Subpart I—Reports and Interchange of Training Information

§ 410.901 Reports.

(a) The reports required by section 4113(b) of title 5, United States Code, and the reports necessary to coordinate Federal training of State and local government employees and officials required by section 4746 of title 42, United States Code, and the reports required by this section shall be prepared for each fiscal year. An agency shall submit a consolidated report to OPM not later than September 1 of the succeeding fiscal year.

(b) The consolidated report shall include:

(1) A narrative summary—

(i) Outlining, in the first report to OPM under this section, the training policies and overall program of the agency and, in each subsequent report, any major changes in policy or shifts in program emphasis;

(ii) Describing the manner in which training has aided in the accomplishment of the mission of the agency by providing skills and knowledges;

(iii) Describing the manner in which agency training has aided in the accomplishment of the mission of the State and local government by providing skills and knowledge, particularly in the professional, administrative, and technical fields as expressed to the agencies by the jurisdictions;

(iv) Assessing generally the value of training to the agency and to State and local governments, as expressed to the agencies by the jurisdiction;

(v) Assessing generally the extent to which economies and improved operation have resulted in the agency and in State and local governments, as expressed to the agencies by the jurisdiction; and

(vi) Providing other information which OPM may request concerning specific areas of agency training activity.

(2) A statistical summary, in the format prescribed by OPM—

(i) On employee participation and agency expenditures in training conducted through agency, interagency, and non-Government facilities;

(ii) On State and local government participation in Federal employee training programs;

(iii) On the number of training participants for which the Federal agency received payments and the number of training participants for which the Federal agency waived payments from or on behalf of State and local governments for the costs of training provided under section 4742(b) of title 42, United States Code; and

(3) Attachments—

(i) Training report, Standard Form 10, containing special information required by section 4113(b)(2) of title 5, United States Code, regarding employees receiving training by, in, or through non-Government facilities for more than 120 days;

(ii) Contributions and Awards Report, Standard Form 11, containing special information regarding employees who, under authority of section 4111(a) of title 5, United States Code, receive from non-Government sources contributions or awards incident to training in non-Government facilities.

(iii) An attachment providing the number of employees failing to fulfill their obligations under section 4108 of title 5, United States Code, and a description of the action taken with respect to the recovery of the additional expenses incurred by the Government in connection with their training; and

(iv) Such other attachments as OPM may request.

(c) OPM may grant exceptions to the requirements stated in paragraphs (a) and (b) of this section.

(d) In addition to the report required by paragraphs (a) and (b) of this section, an agency shall submit for each fiscal year a consolidated report to OPM on training it provided to employees serving in cooperative education programs, as specified in Chapter 308 of the Federal Personnel Manual.

[36 FR 13201, July 16, 1971, as amended at 38 FR 28282, Oct. 12, 1973]

§ 410.902 Interchange of training information.

An agency, at the time and in the manner it considers appropriate, or at the request of OPM, shall inform OPM and, as appropriate, other agencies, and State and local governments of new, different, or particularly successful training practices or materials which it develops or acquires and which it is able to share with others.

(42 U.S.C. sec. 4746)

[36 FR 13202, July 16, 1971]

PART 412—EXECUTIVE AND MANAGEMENT DEVELOPMENT

Subpart A—General Provisions

Sec.
412.101 Purpose.
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AUTHORITY: 5 U.S.C. 3397.

SOURCE: 45 FR 80470, Dec. 5, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 412.101 Purpose.

This subpart sets forth the requirement for agencies to establish executive and management development programs, and prescribes the criteria of the Office of Personnel Management for such programs, which implement subsections (a) and (b) of section 3396 of title 5, United States Code, and are prescribed under the authority of section 3397 of title 5, United States Code.

§ 412.103 Requirement for agency programs.

(a) Each agency shall establish and maintain an executive and management development program, to consist of the following components:

(1) A program(s) for the continuing development of senior executives.

(2) For an agency with positions in the Senior Executive Service, a program(s) for the systematic development of candidates for the Senior Executive Service; small agencies, those with 150 SES positions or fewer, may meet this requirement by developing programs jointly with other agencies or by participating in programs administered by other agencies.

(3) Either or both of the following, for the development of managers:

(i) Open management development systems offering management development opportunities to all incumbent managers and some potential managers.

(ii) Selective management development programs offering management development opportunities to competitively selected employees.

(b) Each agency's executive and management development program(s) must conform to criteria prescribed in § 412.107 of this subpart.

§ 412.105 Approval of agency programs.

The Office shall review periodically agency executive and management development programs and approve those which meet the criteria prescribed in § 412.107. Whenever approved agency programs are found to fall substantially short of meeting any of the criteria, OPM approval will be withdrawn until the agency takes the necessary corrective action to bring the program into compliance.

§ 412.107 Criteria for agency executive and management development programs.

(a) *Program management.* Overall planning and management of the agency executive and management development program(s) shall be provided by a departmental or independent agency executive resources board or a complex of executive boards at agency and subordinate levels. Executive resources boards shall ensure that executive and management development programs are efficiently and effectively implemented as indicated by systematic evaluation of the program and by the incorporation of evaluation results into planning for successive program operations. Boards shall also ensure that executive development programs and activities are integrated into and consistent with the agency's Senior Executive Service personnel system.

(b) *Funding and staffing.* Each program established under § 412.103 shall include provisions for funding and staffing needed to support the program. Each agency must be able to demonstrate that planned expenses for staff services, developmental assignments, selection procedures, formal training, program evaluation, and related matters will be met. Each agency must also be able to demonstrate that it is providing adequate numbers of competent staff to support planned executive and management development activities.

(c) *SES candidate development programs*—(1) *Selection systems.* Qualifications Review Boards (QRBs) established by OPM must, by law, certify the executive qualifications of all candidates for initial career appointment to the SES, including candidates who shall have completed approved executive development programs. However, the QRB shall presume that a candidate who successfully completes an SES candidate development program approved by OPM meets the executive qualifications for initial career appointment to the SES. Individuals certified by a QRB on the basis of completion of an executive development program are automatically in the "well qualified" group for any managerial position for which they meet the technical/professional qualifications and may be appointed to the SES without further merit competition. Therefore, selections for participation in candidate development programs are considered to be part of the process of selection for the SES, must follow the SES merit staffing procedures prescribed by OPM, must comply with the Uniform Guidelines on Employee Selection Procedures, and must provide for the removal from the program of individuals who do not make satisfactory progress as determined by the agency Executive Resources Board. In addition, selection systems for SES candidate development programs shall:

(i) Be based on the managerial and technical competencies required in the agency's SES positions;

(ii) Serve to further progress toward affirmative action goals;

(iii) Provide, in each agency with over 150 SES positions, for recruitment of candidates from all groups of qualified individuals within the civil service, or from all groups of qualified individuals, whether or not within the civil service. Programs that over a three-year period average eight per cent candidate intake from other agencies and/or outside the civil service shall automatically be considered to be in compliance with this requirement;

(iv) Be based on projections of anticipated SES vacancies, made at least biennially, with the number of candidates selected to be no greater than twice the number of projected vacancies; and

(v) Focus primarily on individuals who are just below SES level.

(2) *Development of SES candidates.* (i) Each participant in an SES candidate development program shall have an individual development plan ("IDP"), approved by the appropriate executive resources board, specifying the developmental activities (work assignments, training, education, and/or orientation) to be undertaken during the course of the program. These activities shall be tailored to provide the individual with the executive competencies needed by SES members Governmentwide and in the agency's SES positions, and must include participation in an interagency executive development training experience, prescribed by the Office, which focuses on Governmentwide executive competencies. Agencies may apply to OPM for a waiver of the interagency executive development training experience for individual SES candidates on a case by case basis.

(ii) Each participant in an SES candidate development program shall have a member of the Senior Executive Service as a senior advisor.

(d) *Development of SES members.* Systems for the continuing development of SES members shall:

(1) Include preparation, implementation, and regular updating of an individual development plan for each SES member, to be approved by the appropriate executive resources board. These plans shall be tied to the performance appraisal cycle and focus on the enhancement of existing competencies as well as the correction of deficiencies identified in performance

appraisals, and on preparing SES members for future assignments; and

(2) Result in developmental experiences for SES members which, through continuing short-term opportunities and periodic involvement in longer-term programs, will:

(i) Help to meet organizational needs for managerial improvement and increased productivity;

(ii) Help SES members to keep up-to-date in professional, technical, managerial, sociological, economic and political areas; and

(iii) Meet the individual needs of SES members for growth and development—intellectually and personally; and

(3) Include provisions for executive sabbaticals for carefully selected members as provided for by subsection (c) of section 3396 of title 5, United States Code.

(e) *Management development.* Executive development programs shall be linked to more comprehensive systems and/or programs for the development of managers. Such systems and/or programs shall:

(1) Provide management training and development experiences for both incumbent managers and specialists identified as having potential at grades GS-13 through GS-15 to meet agency and individual needs;

(2) Serve to further progress toward affirmative employment goals (where appropriate to this purpose, an agency may include employees at grade GS-12);

(3) Be designed to improve accountability, productivity and performance at the mid-management level; and

(4) Provide a foundation of early management training and appropriate developmental experiences for SES candidate development programs.

§ 412.109 Submissions to OPM.

(a) Each agency making or intending to make more than five career appointments to the Senior Executive Service shall establish its executive and management development program in accordance with a program plan which has been approved by OPM.

(b) These agencies shall submit formal updates of their executive and management development program plans as of December 31, 1980, and October 1, 1981, 1982 and 1983. Updates should be submitted by the chairperson of the departmental or independent agency executive resources board.

(c) Agencies shall also inform OPM of any significant changes as they occur during the fiscal year.

(d) Agencies whose programs are sufficiently well established during the first three years may be exempted, by the letter granting long-term OPM approval of their programs, from the later updates.

Subparts B–D—[Reserved]

Subpart E—Senior Executive Service Status and Nonstatus Candidate Development Programs

§ 412.501 Purpose.

This subpart sets forth regulations establishing two types of SES candidate development programs and prescribing their use by agencies.

§ 412.503 Policy.

Section 3393 of title 5, United States Code, requires that career appointees to the SES be recruited either from all groups of qualified individuals within the civil service, or from all groups of qualified individuals whether or not within the civil service. In order to accommodate candidates from various sources in the most flexible manner possible, two types of programs (which may be administered in close coordination with each other) are authorized:

(1) "Status" programs for the development of candidates serving in career and career-type appointments, and

(2) "Non-status" programs for the full-time development of candidates selected from outside Government and/or from among employees serving on other than career or career-type appointments within the civil service, utilizing the Schedule B appointing authority authorized by 5 CFR 213.3202(j).

§ 412.505 "Status" programs.

Only employees serving under career appointments, or under career-type appointments as defined in 5 CFR

317.304(a)(2), may participate in these programs.

§ 412.507 "Non-status" programs.

(a) *Eligibility.* For Schedule B programs, eligibility is restricted to individuals other than employees serving under career appointments, or under career-type appointments as defined in 5 CFR 317.304(a)(2).

(b) *Requirements.* (1) An appointment under the Schedule B authority may not exceed, or be extended beyond, three years.

(2) Agencies must document, as part of their executive development program plan submitted to OPM for approval, the kinds of additional developmental experiences which will be provided to individuals selected for these programs. OPM shall be notified promptly of any such changes to agency plans.

(3) Schedule B appointments must be made in the same manner as merit staffing requirements prescribed for the SES, except that each agency shall follow the principle of veteran preference as far as administratively feasible. Positions filled through this authority are excluded under 5 CFR 302.101(c)(6) as positions exempt from appointment procedures of Part 302.

(4) Assignments must be for developmental purposes connected with the SES candidate development program. Candidates serving under Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

§ 412.509 Competitive appointments.

(a) An agency must use the Schedule B excepted appointment authority [§ 213.3202(j)] to fill positions established exclusively for the agency's non-status executive development program.

(b) An agency may not use competitive appointment authorities to fill these positions.

(c) However, an agency may use competitive appointment authorities to fill permanent vacant positions when the appointee is simultaneously being selected as a participant in the agency's status SES candidate development program.

PART 430—PERFORMANCE MANAGEMENT

Subpart A—Performance Management System [Reserved]

Subpart B—Performance Appraisal for General Schedule and Wage Grade Employees

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AUTHORITY: 5 U.S.C. 4305.

SOURCE: 48 FR 49478, Oct. 25, 1983, unless otherwise noted.

Subpart A—Performance Management System [Reserved]

Subpart B—Performance Appraisal for General Schedule and Wage Grade Employees.

§ 430.201 Purpose.

It is the purpose of this subpart to ensure that performance appraisal systems are used as a tool for executing basic management and supervisory responsibilities by:

(a) Communicating and clarifying agency goals and objectives,

(b) Identifying individual accountability for the accomplishment of organizational goals and objectives,

(c) Evaluating and improving individual and organizational accomplishments, and

(d) Using performance ratings as a basis for rewarding employees and other personnel actions.

§ 430.202 Coverage.

(a) Employees and agencies covered by statute.

(1) 5 U.S.C. 4301(1) lists agencies covered by this part.

(2) 5 U.S.C. 4301(2) lists employees covered by statute by this part.

(b) *Statutory exclusions.* This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301 (1) and (2), the United States Postal Service and the Postal Rate Commission.

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded:

(1) Positions in Schedule C as authorized by § 213.3301 of this chapter.

(2) Positions filled by Noncareer Executive Assignments under Part 305 of this chapter.

(3) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(d) Agency requests for exclusions. Heads of agencies or their designees may request the Director of the Office of Personnel Management to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.203 Definitions.

In this part, terms are defined as follows—

"Appraisal" means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s). This includes oral or written progress reviews.

"Appraisal period" means the period of time established by an appraisal system for which an employee's performance will be reviewed and for which a performance rating will be given.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C. and Subpart B of this part which provides for identification of critical and non-critical elements, establishment of performance standards, communication of elements and standards to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a job consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that "Unacceptable" performance on the element would result in "Unacceptable" performance of assigned work.

"Non-critical element" means a component of an employee's job which does not meet the definition of a critical element, but is of sufficient importance to warrant appraisal and the assignment of an element rating.

"Performance" means an employee's accomplishment of assigned duties and responsibilities as specified in the critical and non-critical elements of the employee's position.

"Performance Plan" means the aggregation of all of an employee's written critical and non-critical elements and performance standard(s).

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

"Rating" means the written record of the appraisal of each critical and non-critical element and overall performance.

§ 430.204 The performance appraisal process.

(a) As required by 5 U.S.C. 4302(a), each agency shall establish one or more appraisal systems for appraising the work performance of employees during an appraisal period.

(b) Critical elements must be included and non-critical elements may be included in individual Performance Plans. An employee must be appraised and rated on each critical and non-critical element in the employee's Performance Plan, unless the employee has had no opportunity to demonstrate performance on the element. An employee must also be given a summary rating. Agency appraisal systems may not provide for assignment of performance ratings to subelements.

(c) Agency appraisal systems shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level. Pass/fail elements are tasks, not true elements, and therefore cannot be used as elements in an appraisal.

(d) Agency appraisal systems shall provide for five summary rating levels. The required summary rating levels are "Outstanding", "Exceeds Fully Successful", "Fully Successful", "Minimally Successful", and "Unacceptable".

(1) Agency Performance Management Plans must include decision tables for deriving summary rating levels from performance ratings on critical elements and, at agency discretion, ratings on non-critical elements. If ratings on non-critical elements are considered in deriving summary ratings, the decision tables must show that more weight will be given to critical elements than to non-critical elements in determining an employee's summary rating.

(2) If an employee is rated "Unacceptable" on one or more critical elements, an "Unacceptable" summary rating must be given.

(e) The requirements of this paragraph apply only if performance standards have not been established at the "Unacceptable" level or at the element level immediately above the "Unacceptable" level.

(1) If at any time an employee's performance is determined to be below "Fully Successful" on one or more critical elements, agencies must start a new appraisal period which is not an opportunity period under Part 432 of this chapter.

(2) At the beginning of a new appraisal period, agencies must provide a Performance Improvement Plan (PIP) to each employee who has been determined to be below "Fully Successful" on one or more critical elements. The PIP must:

(i) Explain the employee deficiencies;

(ii) Explain steps to be taken in an attempt to resolve the deficiencies; and

(iii) Communicate performance standards at the "Minimally Successful" or "Unacceptable" level for those critical elements where performance has been determined to be below "Fully Successful."

(f) If performance standards have not been prepared at the "Outstanding" level or at the element level immediately below the "Outstanding" level, a written justification must be prepared for an "Outstanding" summary rating.

(g) An appraisal system shall not permit any preestablished distributions of expected levels of performance (such as the requirement to rate on a bell curve) that interfere with appraisal of actual performance against standards. However, agencies must provide for higher level management of the performance appraisal process in the interest of employee equity and in order to reflect organizational performance.

(h) Definitions of the five required summary rating levels follow. Performance standards and agency procedures for deriving summary ratings must be consistent with these definitions.

(1) "Outstanding" means performance of rare, very high quality. As warranted, an Outstanding performer produces an exceptional quantity of work significantly ahead of established

schedules or deadlines and with very little supervision.

(2) "Exceeds Fully Successful" means performance of unusually good or excellent quality. As warranted, the employee produces a very high quantity of work ahead of established schedules or deadlines and with less than normal supervision.

(3) "Fully Successful" means performance which is of good quality. The employee produces the expected quantity of work and meets deadlines or schedules for completion of work.

(4) "Minimally Successful" means performance which is not "Unacceptable", but needs improvement to achieve the "Fully Successful" level. This may be evidenced by the need for close supervisory review, discussion, and correction of work products. When performance falls below "Fully Successful", it may be necessary to take remedial action.

(5) "Unacceptable" means performance which fails to meet established performance standards in one or more critical elements of the employee's position. When performance is "Unacceptable", corrective action must be taken consistent with required procedures.

(i) Each appraisal system shall provide for establishing performance standards based on requirements of employees' positions, providing written Performance Plans to employees at the beginning of each appraisal period, and appraising employees based on a comparison of performance with the standards established for the appraisal period. An agency shall encourage employee participation in establishing performance standards.

(j) Critical elements, non-critical elements, and performance standards must be related to the employee's assigned work.

(k) Employees shall generally be given performance ratings on an annual basis. Agencies may provide for longer appraisal periods when duties and responsibilities of a position or the tour of duty of a position so warrant. Agencies should take into consideration all performance ratings of assigned work given the employee throughout the appraisal period in arriving at the annual rating.

(l) Annual performance ratings shall be used as a basis for reduction-in-force actions, except that an employee without an annual performance rating of record shall be given a performance rating before a RIF if the employee has served for the minimum appraisal period.

(m) Agency appraisal systems shall establish a minimum appraisal period of not less than 90 calendar days. A performance rating of assigned work for the minimum appraisal period but less than one year shall constitute the annual rating only as required by paragraph (l) of this section or any other applicable provision of law or regulation. When a within-grade increase decision is not consistent with the employee's last performance rating, an additional and more current performance rating must be prepared.

(n) Critical elements, non-critical elements, and performance standards shall be in writing and shall be reviewed and approved by a supervisor or manager at a higher level than the appraising official.

(o) Periodic performance ratings and performance based personnel actions shall be reviewed and approved by a supervisor or manager at a higher level than the appraising official. Performance ratings shall be in writing and shall be provided to the employee. Performance ratings may not be communicated to employees prior to approval by a higher level reviewer.

(p) An employee must be given the right to ask for reconsideration of a performance rating by the supervisor or manager who approved the performance rating. This reconsideration will be in the interest of insuring fairness of an individual's rating. Additional procedures for review of a performance rating may be established at the discretion of the agency head.

(q) *Details within the same agency.* Agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion within the same agency when the detail or temporary promotion is expected to last 120 calendar days or longer. Performance ratings on critical elements must be prepared for these details and temporary promotions and must be considered in deriving an employee's next annual summary rating.

(r) *Details to another agency or organization.* When an employee is or has been detailed or temporarily assigned outside of the agency, an annual performance rating must be prepared if the employee has served for the minimum appraisal period inside the agency.

(1) If an employee has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period in another organization, the agency must make a reasonable effort to obtain appraisal information from the other organization sufficient to prepare an annual performance rating.

(2) When an annual performance rating cannot be prepared, the employee's performance rating of record may be extended for no longer than one year. (An extended performance rating shall not be used as a basis for within-grade increase or merit pay determinations which must be waived under § 531.409(d) or § 540.106(g) of this chapter.)

(3) During any period of time when an agency cannot prepare a new performance rating or extend a previous rating, the agency may assume that the employee's performance is "Fully Successful."

(s) Performance appraisals and ratings shall be used:

(1) To provide employees with information on their performance and how it may be improved.

(2) As a basis for decisions to grant awards; grant or withhold pay increases, i.e., within-grade increases, Federal Wage System step increases, and quality step increases; grant merit pay; reassign; promote; develop; retain in reduction in force; and reduce in grade or remove.

(t) If an employee is given an "Outstanding" summary performance rating, a written recommendation for appropriate monetary, non-monetary, or honorary recognition must be prepared.

(u) The performance rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment in accordance with Executive Order 5396.

§ 430.205 Training and evaluation.

To assure that the requirements of the law will be effectively implemented, agencies must provide appropriate training and information to supervisors and employees on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of their appraisal system(s) and to improve the system(s).

§ 430.206 OPM review of appraisal systems.

(a) The Office of Personnel Management will review performance appraisal systems to determine if they conform to requirements of law and OPM regulations. The Office of Personnel Management will also review appraisal systems with respect to their contribution to agency effectiveness and efficiency and appropriate use of performance information in personnel decisions.

(b) If the Office of Personnel Management determines that an appraisal system does not meet the requirements of Subchapter I of 5 U.S.C. 43 or of this part, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.207 Performance Management Plans.

(a) Agencies must submit proposed Performance Management Plans to the Office of Personnel Management for review and approval. Performance Management Plans shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Appraisal Systems required under 5 U.S.C. 4302 and 4312. Submissions may either be agency-wide appraisal systems or requirements which the systems of subordinate organizations must meet.

(2) Merit Pay System Plans required by Part 540 of this chapter.

(3) Performance Award Plans required by Part 531 of this chapter.

(4) Plans for determining and distributing Within-Grade Increases, Quality Step Increases and the agency performance award fund, including previous years' and projected expenditures.

(b) Proposed changes to approved Performance Management Plans which would have an impact on how an agency meets legal or regulatory requirements must be submitted to the Office of Personnel Management for review and approval.

(c) Each agency shall maintain records and submit reports required by OPM regarding the operation of an agency Performance Management Plan or any part of a plan.

(d) Up to eight (8) performance management plans may be submitted as demonstration projects under 5 U.S.C. 4703 which would allow for consultation or negotiation, as appropriate, by an agency and recognized labor organizations. Such plans will not be restricted by the provisions of this part but shall investigate and implement different types of merit pay plans. They may include proposals for waiting periods for within-grade increases, when within-grades shall be granted automatically or when granted earlier or later, career ladder promotions, grievance of ratings, gain sharing and other merit pay proposals. Any such plans shall meet all of the requirements of Section 4703.

Subpart C—Performance Awards [Reserved]

Subpart D—Performance Appraisal for the Performance Management and Recognition System

AUTHORITY: 5 U.S.C. 4302a and 4305.

SOURCE: 50 FR 35495, Aug. 30, 1985, unless otherwise noted.

§ 430.401 Statutory authority.

Title 5, U.S. Code, section 4302a provides for the establishment of performance appraisal systems for Performance Management and Recognition System (PMRS) employees. This subpart contains regulations which the Office of Personnel Management has prescribed for performance appraisal under the Performance Management and Recognition System, and implements and supplements the provisions of 5 U.S.C. 4302a.

§ 430.402 Purpose.

It is the purpose of this subpart to ensure that performance appraisal systems for Performance Management and Recognition System employees are used as a tool for executing basic management and supervisory responsibilities by:

(a) Communicating and clarifying agency goals and objectives;

(b) Identifying individual accountability for the accomplishment of organizational goals and objectives;

(c) Evaluating and improving individual and organizational accomplishments; and

(d) Using the results of performance appraisal as a basis for adjusting base pay and determining performance awards, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

§ 430.403 Coverage.

(a) *Employees and agencies covered by statute.* This subpart applies to any supervisor or management official, as defined in 5 U.S.C. 7103 (a)(10) and (a)(11), who is in a position within grades GS-13, GS-14, or GS-15 of the General Schedule and covered by Part 540 of this chapter.

(b) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded:

(1) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(2) Positions filled by Noncareer Executive Assignments under Part 305 of this chapter.

(c) *Agency requests for exclusions.* Heads of agencies or their designees may request the Director of the Office of Personnel Management to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.404 Definitions.

In this subpart, terms are defined as follows—

"Appraisal" means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s).

"Appraisal period" means the period of time established by an appraisal system for which an employee's performance will be reviewed.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and noncritical elements, establishment of performance standards, communication of elements and standards to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

"Non-critical element" means a component of an employee's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal. Non-critical elements are optional and may be used at agency discretion.

"Performance" means an employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employee's position.

"Performance Appraisal System". (See Appraisal System).

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The performance management plan, which includes the performance appraisal plan, must be submitted to OPM for review and approval as required by § 430.411 of this subpart and § 540.111 of this chapter.

"Performance plan" means the aggregation of all of an employee's written critical and non-critical elements and performance standard(s).

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

"Progress review" means a review of the employee's progress toward achieving the performance standards and is not in itself a rating.

"Rating" (See Summary Rating).

"Rating of record" means the summary rating, under 5 U.S.C. 4302a, required at the time specified in the performance management plan or at such other times as the plan specifies for special circumstances, including written notice at any time that an employee's performance is unacceptable on one or more critical elements.

"Summary Rating" means the written record of the appraisal of each critical and non-critical element and the assignment of summary rating level (as specified in § 430.405(h) of this subpart).

§ 430.405 Agency performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for employees covered by the Performance Management and Recognition System.

(b) Under each appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in § 430.405(h), must be assigned.

(c) Each appraisal system must provide for the joint participation of the supervising official and the employee in developing performance plans. This may be accomplished by means including, but not limited to, the following:

(1) Employee and supervisor discuss and develop performance plan together;

(2) Employee provides to supervisor a draft performance plan;

(3) Employee comments on draft performance plan prepared by supervisor; and

(4) Performance plan is prepared by a group of employees occupying similar positions, with supervisor's approval.

Final authority for establishing such plans rests with the supervising officials.

(d)(1) Each appraisal system shall provide for establishing performance elements and standards based on the requirements of the employees' positions, providing written performance plans to employees at the beginning of each appraisal period (normally within 30 days), and appraising employees based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives should be included in performance plans by incorporating objectives, goals, program plans, workplans, or by other similar means that account for program results.

(e) Each appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each appraisal system shall provide that performance plans shall be in writing and shall be reviewed and approved at the beginning of the appraisal period by a person at a higher level in the organization than the appraising official.

(g) Each appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(h) Each appraisal system shall provide for five summary rating levels. The rating levels must include an "Unacceptable" level, a level between "Unacceptable" and "Fully Successful", a "Fully Successful" level, and two levels which are above "Fully Successful." For purposes of this part, "Unacceptable" is referred to as level 1, the level between "Unacceptable" and "Fully Successful" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the level two levels above "Fully Successful" is level 5.

(i) Each appraisal system shall provide for assisting employees in improving performance rated at a level below the "Fully Successful" level. Such assistance may include but is not limited to: formal training, on-the-job training, counseling, and closer supervision.

(j) Except with respect to employees occupying positions in Schedule C as authorized by § 213.3301 of this chapter,

(1) Each appraisal system shall provide for reassigning, reducing in grade, or removing any employee rated "Unacceptable," but only after affording the employee a reasonable opportunity to improve performance to the "Fully Successful" level or higher on the critical element(s) rated "Unacceptable", as required in 5 U.S.C. 4302a(b)(6).

(2) Once an "Unacceptable" rating has been communicated, the employee must be informed of the performance standards that must be reached in order to be retained.

(3) If, at the conclusion of the opportunity period referred to in paragraph (j)(1) of this section, the employee's performance is "Unacceptable", the agency must initiate reassignment, reduction in grade, or removal, subject to the provisions of 5

U.S.C. 4303. When an employee's performance improves to level 2, but not level 3, the employee, if not reassigned, shall be required to undergo an additional opportunity period in order to demonstrate performance at the "Fully Successful" level or higher, as required by 5 U.S.C. 4302a(b)(6).

(k) When an employee's position under the General Schedule is converted to PMRS with no change of duties and responsibilities in accordance with 540.103(b)(1), the employee's rating of record will be considered to have been derived from elements and standards established under 5 U.S.C. 4302a.

§ 430.406 Appraisal of performance.

(a) *Appraisal period.* Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. The appraisal period will end no earlier than June 30 nor later than September 30 of the same year. Systems shall provide for preparing a summary rating when an employee changes positions during the appraisal period, if the employee has served for the minimum appraisal period in the position from which he/she has changed; agency performance management plans must describe how these ratings will be taken into consideration in deriving the next rating of record.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days but not more than 120 days.

(c) *Appraisal of each element.* An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When employees are detailed or temporarily promoted within the same agency, and the detail or temporary promotion is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion. Ratings on critical elements must be prepared for these details and temporary promotions and must be considered in deriving an employee's next rating of record.

(2) When employees are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the employee's next rating of record.

(i) If an employee has served in the employing agency for the minimum appraisal period, the employee must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an employee has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating based on a performance plan obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each employee at least once during the appraisal period. At a minimum, employees shall be informed of their level of performance by comparison with the performance elements and standards established for their positions.

(f) *Appraising disabled veterans.* The performance appraisal and resulting rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

§ 430.407 Ratings.

(a) *Written Rating.* A written rating of record must be given to each employee as soon as practicable after the end of the appraisal period.

(b) *Appraisal of each critical and non-critical element.* Employees must be appraised on each critical element and non-critical element of the performance plan(s) on which the employee has had a chance to perform.

(c) *Higher level review.* Ratings of record and performance-based personnel actions shall be reviewed and approved by a person(s) at a higher level in the organization than the appraising official. Ratings of record may not be communicated to employees prior to approval by the final reviewer. This does not preclude communication about appraisal of performance between a supervisor and an employee prior to the determination of the rating of record. Ratings of record must be approved by the official with the responsibility for managing the performance awards budget within the agency.

(d) *Forced distribution.* An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart. However, in order to provide for the equitable distribution of merit increases and performance awards under the PMRS, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful." These procedures must be described in the agency's performance management plan.

(e) *Reconsideration process.* Upon request by the employee, his or her rating of record shall be reconsidered. The employee must be given the right to a reconsideration by a person at a higher level in the organization than the appraising, reviewing, or approving official, unless there is no one at a higher level. This does not preclude the involvement of such officials at intermediate levels in the process. The procedures for such reconsideration shall be in accordance with Part 771 of this chapter.

(f) *Inability to rate.* When an agency cannot prepare a rating of record at the time specified in the plan, the appraisal period shall be extended, for non-pay purposes, for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared. (For pay purposes refer to Part 540 of this chapter.)

(g) *Transfer of rating.* If an employee moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.405(a) of this chapter. A summary rating must be prepared which must be taken into consideration by the gaining agency when deriving the next rating of record.

§ 430.408 Performance standards review boards.

(a)(1) Each agency shall establish one or more performance standards review boards. Each board will consist of at least six members chosen by the agency head or his or her designee. One-half of the board must be composed of employees covered by the PMRS and in the competitive service. The chair of the board will be chosen by the head of the agency or his or her designee.

(2) Agency performance management plans shall set forth the composition and operating procedures for the board(s). Boards shall become operational upon OPM's approval of the agency's performance management plan and shall report to their respective agency heads or designees at least annually.

(3) The board(s) shall review representative performance plans and report to the head of the agency or his or her designee at least annually on the quality of the plans including the difficulty of the performance standards. The board shall advise the head of the agency or his or her designee on ways to improve performance plans but shall have no authority to approve or modify performance plans.

(4) Boards shall review the ratings and make recommendations to the head of the agency or his or her designee regarding improving the equitable application of standards but shall not recommend any distribution of ratings. Such reviews shall be conducted after ratings of record have been prepared and communicated.

(5) Boards are also responsible for studying the feasibility of organizational awards and providing technical assistance on any demonstration projects on performance appraisal.

§ 430.409 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and employees on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as needed.

§ 430.410 OPM review of performance appraisal systems.

(a) OPM will review performance appraisal systems to determine conformance to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter I of 5 U.S.C. 43 or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.411 Performance appraisal plans.

(a) Agencies must submit proposed performance appraisal system to OPM for approval as part of the performance management plans required at § 540.111 of this chapter. If major subcomponents of an agency propose to modify any element of the agency's system that is included in the Performance Management Plan Checklist, as provided in § 540.111(b)(1), or to develop a separate system based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval.

(b) Agencies shall submit to OPM for approval any changes to their performance appraisal plans that modify any element of the agency's system that is included in the Performance Management Plan Checklist.

§ 430.412 Reports.

So that OPM can provide the Congress and others with information regarding the operation of the Performance Management and Recognition System and performance management plans including the performance appraisal systems, each agency shall maintain such records and submit to OPM such reports as OPM may require.

PART 431—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

Subpart A—Statutory Authority

Sec.
431.101 General.

Subpart B—Regulatory Requirements of the Office of Personnel Management

431.201 Purpose.
431.202 Coverage.
431.203 Definitions.
431.204 The performance appraisal process.
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Subpart C—Implementation

431.301 Implementation of this part.

AUTHORITY: 5 U.S.C. 43 Subchapter II.

SOURCE: 48 FR 49481, Oct. 25, 1983, unless otherwise noted.

Subpart A—Statutory Authority.

§ 431.101 General.

Chapter 43 of title 5, United States Code (5 U.S.C. 4311–4315) provides for the establishment of Senior Executive Service performance appraisal systems and appraisals of senior executives' (as defined in 5 U.S.C. 3132(a)) performance. This part contains the regulations which the Office of Personnel Management has prescribed for performance appraisal in the Senior Executive Service, and supplements the provisions of 5 U.S.C. 4311–4315.

Subpart B—Regulatory Requirements of the Office of Personnel Management

§ 431.201 Purpose.

It is the purpose of this subpart to ensure that performance appraisal systems are used as a tool for executing basic performance management responsibilities by:

(a) Communicating and clarifying organizational goals and objectives,

(b) Identifying individual accountability for the accomplishment of agency goals and objectives,

(c) Evaluating and improving individual and organizational accomplishments, and

(d) Using performance ratings as a basis for rewarding employees and other personnel actions.

§ 431.202 Coverage.

(a) All senior executives covered by subchapter II, of Chapter 31 of title 5, United States Code are covered by this part.

(b) 5 U.S.C. 3132(a)(1) identifies agencies covered by this part.

§ 431.203 Definitions.

In this part, terms are defined as follows—

"Appointing authority" means the agency or department head or his or her designee.

"Appraisal period" means the period of time established by an appraisal system for which the senior executive's performance will be reviewed and for which a performance rating will be given.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter II of chapter 43 of title 5, U.S.C., and Subpart B of this part which provides for identification of critical and non-critical elements, establishment of performance standards, communication of elements and standards to senior executives, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a job consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that "Unsatisfactory" performance on the element would result in "Unsatisfactory" performance of assigned work.

"Final rating" means the rating assigned by an appointing authority after considering the recommendations of a Performance Review Board.

"Initial rating" means the rating by the senior executive's immediate supervisor, the rating official.

"Non-critical element" means a component of an employee's job which does not meet the definition of a critical element, but is of sufficient importance to warrant appraisal and the assignment of an element rating.

"Performance" means the senior executive's accomplishment of assigned duties and responsibilities as specified in the critical and non-critical elements of the executive's position.

"Performance appraisal" means the act or process of reviewing and evaluating the performance of an executive against the described performance standards. This includes oral or written progress reviews.

"Performance Plan" means the aggregation of the senior executive's written critical and non-critical elements and performance standards.

"Performance Rating" means the written record of the appraisal of each critical and non-critical element and overall performance.

"Performance requirement" means performance standard.

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, cost efficiency, timeliness, and manner of performance.

§ 431.204 The performance appraisal process.

(a) As required by 5 U.S.C. 4312(a), each agency shall establish one or more appraisal systems for appraising the individual and organizational work performance of senior executives during an appraisal period.

(b) Critical elements must be included and non-critical elements may be included in individual Performance Plans. An executive must be appraised and rated on each critical and non-critical element in the executive's Performance Plan, unless the employee has had no opportunity to demonstrate performance on the element. An executive must also be given a summary rating. Agency appraisal systems may not provide for assignment of performance ratings to subelements.

(c) Agency appraisal systems shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level. Pass/fail elements are tasks, not true elements, and therefore cannot be used as elements in an appraisal.

(d) Agency appraisal systems shall provide for five summary rating levels. The required summary rating levels are "Outstanding," "Exceeds Fully Successful," "Fully Successful," Minimally Satisfactory," and "Unsatisfactory".

(1) Agency Performance Management Plans must include decision tables for deriving summary rating levels from performance ratings on critical elements and, at agency discretion, ratings on non-critical elements. If ratings on non-critical elements are considered in deriving summary ratings, the decision tables must show that more weight will be given to critical elements than to non-critical elements in determining an employee's summary rating.

(2) If an employee is rated "Unsatisfactory" on one or more critical elements, an "Unsatisfactory" summary rating must be given.

(e) The requirements of this paragraph apply only if performance standards have not been established at the "Unsatisfactory" level or at the element level immediately above the "Unsatisfactory" level.

(1) At the beginning of a new appraisal period, agencies must provide a Performance Improvement Plan (PIP) to each employee who has been rated below "Fully Successful" on one or more critical elements.

(2) The PIP must:

(i) Explain the employee deficiencies,

(ii) Explain steps to be taken in an attempt to resolve the deficiencies, and

(iii) Communicate performance standards at the "Minimally Satisfactory" or "Unsatisfactory" level for those critical elements which were rated below "Fully Successful".

(f) If performance standards have not been prepared at the "Outstanding" level or at the element level immediately below the "Outstanding" level, a written justification must be prepared for an "Outstanding" summary rating.

(g) An appraisal system shall not permit any preestablished distributions of expected levels of performance (such as the requirement to rate on a bell curve) that interfere with appraisal of actual performance against standards. However, agencies must provide for higher level management of the performance appraisal process in the interest of employee equity and in order to reflect organizational performance.

(h) Definitions of five required summary rating levels follow. Performance standards and agency procedures for deriving summary ratings must be consistent with these definitions.

(1) "Outstanding" means performance of rare very high quality. As warranted, an Outstanding performer produces an exceptional quantity of work significantly ahead of established schedules or deadlines and with very little supervision.

(2) "Exceeds Fully Successful" means performance of unusually good or excellent quality. As warranted, the employee produces a very high quantity of work ahead of established schedules or deadlines and with less than normal supervision.

(3) "Fully Successful" means performance which is of good quality. The employee produces the expected quantity of work and meets deadlines or schedules for completion of work.

(4) "Minimally Satisfactory" means performance which is not "Unsatisfactory", but needs improvement to achieve the "Fully Successful" level. This may be evidenced by the need for close supervisory review, discussion and correction of work products.

(5) "Unsatisfactory" means performance which fails to meet established performance standards in one or more critical elements of the executive's position.

(i) Each appraisal system shall provide for establishing performance standards based on the requirements of senior executives' positions, providing written Performance Plans to senior executives on or before the beginning of each appraisal period, and appraising senior executives based on a comparison of performance with the standards established for the appraisal period. An agency shall establish performance standards in consultation with the senior executive.

(j) Critical elements, non-critical elements, and performance standards must be related to the senior executive's assigned work and organizational performance requirements.

(k) Critical elements, non-critical elements, and performance standards shall be in writing and shall be reviewed and approved by an executive at a higher level than the appraising official or by a review committee. When elements and standards are written by the agency head, no further review is possible.

(l) Senior executives shall be given performance ratings on an annual basis. Agencies should take into consideration all performance ratings of assigned work given the employee throughout the appraisal period in arriving at the annual rating.

(m) Annual performance ratings shall be used as a basis for reduction-in-force actions, except that an employee without an annual performance rating of record shall be given a performance rating before a RIF if the employee has served for the minimum appraisal period.

(n) Agency appraisal systems shall establish a minimum appraisal period of not less than 90 calendar days. A performance rating of assigned work for the minimum appraisal period but less than one year shall constitute the annual rating only as required by paragraph (m) of this section or any other applicable provision of law or regulation.

(o) Agencies shall provide to each senior executive a copy of the following documents at the time they are prepared: The initial rating, along with notification of the right to respond in writing and to request a higher level review before the rating becomes final; any recommended changes by a higher level executive; and the final rating. Agencies must also provide a copy of critical elements, non-critical elements, and performance standards to each senior executive.

(p) *Details within the same agency.* Agencies shall provide written critical elements and performance standards to senior executives as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary assignment within the same agency when the detail or temporary assignment is expected to last 120 calendar days or longer. Performance ratings on critical elements must be prepared for these details and temporary assignments and must be considered in deriving a senior executive's next annual summary rating.

(q) When a senior executive is detailed or temporarily assigned outside the agency, the agency shall obtain relevant appraisal information from the agency or organization to which the executive is detailed or temporarily assigned.

(r) Agency performance appraisal systems must provide an opportunity for senior executives to respond in writing to an initial rating and have the rating reviewed by an employee in a higher executive level than the supervisor before review by the Performance Review Board (PRB). The senior executive's response shall be provided to both the official making the higher level review and to the PRB.

(1) Agency performance appraisal systems may provide for a mandatory second level review.

(2) A senior executive is entitled to only one higher level review unless the agency provides otherwise.

(3) Agencies shall provide copies of the reviewer's comments and recommendations to the senior executive, the supervisory official and the PRB.

(s) As required by 5 U.S.C. 4314(c), each agency is required to establish one or more PRB's to make recommendations to the appointing authority on the performance of senior executives in the agency.

(1) Each PRB in an agency shall have three or more members appointed by the head of the agency or by an-

other official or group acting on behalf of the head of the agency.

(2) Notice of appointment to the PRB must be published in the FEDERAL REGISTER.

(3) The members of the PRB must be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal.

(4) When appraising a career appointee, more than one-half of the membership of the PRB must be SES career appointees unless OPM determines that there exists an insufficient number of career appointees available to comply with the requirement.

(5) Each PRB will review and evaluate the initial rating, the senior executive's written response, if any, and the written comments, if any, on the initial rating by a higher level executive, and will conduct such further review as the PRB finds necessary.

(6) Individual PRB members must not take part in any PRB deliberations or appraisals involving themselves.

(7) The PRB must make a written recommendation concerning the senior executive's summary rating.

(t) Agencies are required to retain all documentation on performance appraisal decisions for no less than five years from the date of the appraisal.

(u) Final performance ratings shall provide a basis for decisions to remove senior executives from the SES.

(v) Final performance ratings may provide a basis for decisions to:

(1) Reassign or transfer senior executives within the SES;

(2) Grant performance awards to career senior executives; and

(3) Grant performance-related ES pay rate adjustments.

(w) If an employee is given an "Outstanding" summary performance rating, a written recommendation for appropriate monetary, non-monetary, or honorary recognition must be prepared.

§ 431.205 Training and evaluation.

To assure that the requirements of the law will be effectively implemented, agencies must provide appropriate training and information to supervisors and senior executives on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of their appraisal system(s) and to improve the system(s).

§ 431.206 OPM review of SES appraisal systems.

(a) SES performance appraisal systems must conform to requirements of law and OPM regulations. The Office of Personnel Management will review appraisal systems for conformance with these regulations as well as with respect to their contribution to agency effectiveness and efficiency and appropriate use of performance information in personnel decisions.

(b) If the Office of Personnel Management determines that an appraisal system does not meet the requirements of Subchapter II of Chapter 43 of title 5, United States Code or of this part, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 431.207 Performance Management Plans.

(a) Agencies must submit proposed Performance Management Plans to the Office of Personnel Management for review and approval as required by § 430.207 of this chapter.

(b) Proposed changes to approved Performance Management Plans which have an impact on how an agency meets legal or regulatory requirements must be submitted to the Office of Personnel Management for review and approval.

Subpart C—Implementation

§ 431.301 Implementation of this part.

(a) Each agency covered by this part shall submit Performance Management Plans to the Office of Personnel Management for review by February 24, 1984.

(b) Agencies will be required to implement the performance appraisal provisions of an approved Performance Management Plan not later than October 1, 1984 for employees in the Senior Executive Service.

(c) Decisions based on performance appraisals under the agency's Performance Management Plan must begin as soon as possible after the performance appraisal provisions have been implemented and in accordance with provisions of an agency's Performance Management Plan approved by OPM.

PART 432—REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE PERFORMANCE

Subpart A—Principal Statutory Requirements

Sec.

432.101 Principal statutory requirements.

Subpart B—Regulatory Requirements of the Office of Personnel Management

432.201 Coverage.
432.202 Definitions.
432.203 Timing of actions.
432.204 Procedures.
432.205 Interim procedures.
432.206 Appeal and grievance rights.
432.207 Agency records.

AUTHORITY: 5 U.S.C. 4305.

SOURCE: 44 FR 45593, Aug. 3, 1979, unless otherwise noted.

Subpart A—Principal Statutory Requirements

§ 432.101 Principal statutory requirements.

(a) *Opportunity to demonstrate acceptable performance.* 5 U.S.C. 4302(b)(6) requires that, under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1132.)

(b) *Actions based on unacceptable performance.* 5 U.S.C. 4303 provides:

> (a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.
>
> (b) (1) An employee whose reduction in grade or removal is proposed under this section is entitled to—
>
> (A) 30 days' advance written notice of the proposed action which identifies—
>
> (i) Specific instances of unacceptable performance by the employee on which the proposed action is based; and
>
> (ii) The critical elements of the employee's position involved in each instance of unacceptable performance;
>
> (B) Be represented by an attorney or other representative;
>
> (C) A reasonable time to answer orally and in writing; and
>
> (D) A written decision which—
>
> (i) In the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and
>
> (ii) Unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.
>
> (2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.
>
> (c) The decision to retain, reduce in grade, or remove an employee—
>
> (1) Shall be made within 30 days after the date of expiration of the notice period, and
>
> (2) In the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee—
>
> (A) Which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and
>
> (B) For which the notice and other requirements of this section are complied with.
>
> (d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.
>
> (e) Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit System Protection Board under section 7701 of this title.
>
> (f) This section does not apply to—
>
> (1) The reduction to the grade previously held of a supervisor or manager who has not

completed the probationary period under section 3321(a)(2) of this title,

(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or

(3) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1133)

(c) Regulations. 5 U.S.C. 4305 provides that the Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

Subpart B—Regulatory Requirements of the Office of Personnel Management

§ 432.201 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of an employee based solely on unacceptable performance.

(b) *Employees and agencies covered.* The employee and agency coverage of this part is identical with that of § 430.201(a) of Part 430 of this title.

(c) *Exclusions.* (1) This part does not apply to actions excluded by 5 U.S.C. 4303(f).

(2) This part does not apply to employees and agencies excluded under § 430.201 (b), (c), and (d) of Part 430 of this title.

(3) This part does not apply to the following:

(i) An action initiated under the authority of 5 U.S.C. 1206;

(ii) An action taken under 5 U.S.C. 7521 against an administrative law judge;

(iii) An action taken under 5 U.S.C. 7532 in the interest of national security;

(iv) An action taken under a provision of a statute, other than one codified in title 5 United States Code, which excepts the action from the provisions of title 5 United States Code;

(v) A removal from the Senior Executive Service to a civil service position outside the Senior Executive Service under Part 359 of this title;

(vi) A reduction-in-force action governed by Part 351 of this title;

(vii) A voluntary action initiated by the employee;

(viii) An adverse action for cause taken under Part 752 of this title;

(ix) An action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;

(x) An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with § 335.102(g).

(xi) An involuntary retirement because of disability under Part 831 of this title;

(xii) A termination in accordance with terms specified as conditions of employment at the time the appointment was made;

(xiii) An action against a reemployed annuitant;

(xiv) An action against a National Guard Technician.

(5 U.S.C. 3301, 3302, 3502, 4305, 7514, 6325-01)

[44 FR 45593, Aug. 3, 1979, as amended at 45 FR 24856, Apr. 11, 1980]

§ 432.202 Definitions.

Critical element is defined in § 430.202(e) of Part 430 of this title.

Opportunity to demonstrate acceptable performance means a chance for the employee to show that he or she can meet established minimum performance standards for the critical elements of the job.

Reasonable time as used in § 432.203(b) of this subpart means an amount of time commensurate with the duties and responsibilities of the employee's job which is sufficient to allow the employee to show whether he or she can meet minimum performance standards.

Reduction in grade means the involuntary assignment of an employee to a position at a lower classification or job grading level.

Removal means the involuntary separation of an employee from employment with an agency except when taken as a reduction-in-force action.

Unacceptable performance is defined in 5 U.S.C. 4301(3).

§ 432.203 Timing of actions.

(a) *At any time.* Pursuant to the requirements of this subpart, an employee may be reduced in grade or removed at any time during the performance appraisal cycle that the employee's performance in one or more critical elements of the job becomes unacceptable.

(b) *Reasonable time.* The agency shall identify for the employee the critical element(s) for which performance is unacceptable and give the employee a reasonable time to demonstrate acceptable performance before proposing a reduction in grade or removal under this part.

(c) *One-year limitation.* 5 U.S.C. 4303(c)(2) places a one year time restriction on the use of instances of unacceptable performance by an employee.

(d) *Decision.* 5 U.S.C. 4303(c)(1) provides that the decision on the proposed action must be made within 30 days after the date of expiration of the notice period.

§ 432.204 Procedures.

(a) *Statutory requirements.* An employee under this part whose reduction in grade or removal is proposed under this part is entitled to the procedures specified in 5 U.S.C. 4303(b)(1).

(b) *Extension of notice period.* 5 U.S.C. 4303(b)(2) provides that the agency may extend the notice period for a reduction in grade or removal under this part for a period not to exceed 30 days. The agency may further extend the notice period with prior approval of the Office of Personnel Management.

(c) *Representation.* 5 U.S.C. 4303(b)(1)(B) provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties. 5 U.S.C. 7114(a)(5) and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(d) *Consideration of medical condition.* If the employee wishes the agency to consider any medical condition which may contribute to his or her unacceptable performance, he or she shall be given a reasonable time to furnish medical documentation (as defined in § 339.102 of this chapter) of the condition. Whenever possible, the employee shall supply this information at the time the agency offers him or her the opportunity to demonstrate acceptable performance. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information within the time limits allowed for a reply, whenever possible. After its review of the medical documentation supplied by the employee, the agency may, if authorized, require a medical examination under the criteria of § 339.301(a)(3) and the procedures of § 330.302 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria in § 339.301(d) and the procedures of § 339.302 of this chapter. If the employee has five years of service, the agency shall provide information concerning disability retirement. The agency shall be aware of the affirmative obligations of the provisions of 29 CFR 1613.704, which require reasonable accommodation of a qualified employee who is handicapped.

(e) *Applications for disability retirement.* Section 831.501(d) provides that an employee's application for disability retirement shall not preclude or delay any other appropriate personnel action. Section 831.1203 sets forth the basis under which an agency shall file an application for disability retirement on behalf of an employee.

[44 FR 45593, Aug. 3, 1979, as amended at 49 FR 1330, Jan. 11, 1984]

§ 432.205 Interim procedures.

(a) An agency may take an action under this part only after:

(1) Approval by the Office of Personnel Management of a performance appraisal system plan covering the employee;

(2) Establishment of critical elements and identification of performance standards under 5 CFR 430.205 for all employees within the work group who are performing similar work; and

(3) Compliance with the requirements of this part; or

(b) Prior to the completion of an approved system plan and the development of critical elements and standards, an agency may reduce in grade or remove an employee for unsatisfactory performance or inefficiency under Subpart D of Part 752 of this title.

[45 FR 13431, Feb. 29, 1980]

§ 432.206 Appeal and grievance rights.

(a) *Appeal rights.* 5 U.S.C. 4303(e) provides for an appeal of an action under this part to the Merit Systems Protection Board.

(b) *Grievance rights.* 5 U.S.C. 7121(e)(1) requires an aggrieved employee to elect to appeal under this part or when applicable, to file a grievance under the negotiated grievance procedure, but not both.

§ 432.207 Agency records.

(a) *When the action is effected.* The agency shall preserve all relevant documentation concerning a reduction in grade or a removal which is based on unacceptable performance and make it available for review by the affected employee or his or her representative. As a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the notice of decision and the reasons therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) *When the action is not effected.* 5 U.S.C. 4303(d) governs agency records when an action under this part is not effected.

PART 451—SPECIAL AWARDS

Subpart A—[Reserved]

Subpart B—Regulatory Requirements of the Office of Personnel Management for Special Awards.

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Subpart C—Regulatory Requirements of the Office of Personnel Management for Productivity Benefit Sharing Programs [Reserved]

AUTHORITY: 5 U.S.C. 4506 and 5405.

SOURCE: 48 FR 49484, Oct. 25, 1983, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Regulatory Requirements of the Office of Personnel Management for Special Awards

§ 451.201 Applicability.

(a) This subpart contains the regulatory requirements of the Office of Personnel Management for the establishment and conduct of the Special Awards Program for employee suggestions, inventions, and meritorious actions.

(b) An award under this subpart may be granted alone or in addition to a performance award granted under Part 531, Subpart F, of this chapter.

(c) Refer to Part 531, Subpart F, of this chapter for the regulatory requirements on Performance Awards based on accomplishments and contributions within the scope of the employee's job responsibilities and performance standards.

§ 451.202 Purpose.

(a) The Federal Government employees' Special Awards Program is designed to improve Government operations and services. Its purpose is to motivate employees to increase productivity and creativity by rewarding those whose accomplishments and adopted ideas benefit the Federal Government.

(b) The Office of Personnel Management encourages agencies to make maximum use of their authorities under Chapters 45 and 54 of title 5, United States Code, to establish and administer special awards for suggestions, inventions, and meritorious actions that best support and enhance agency and national goals, and meet employee recognition needs.

§ 451.203 Coverage.

(a) This subpart applies to employees as defined by Section 2105 of title 5, United States Code, including those covered by the Merit Pay System, established under Chapter 54 of title 5, United States Code.

(b) This subpart applies to agencies as defined in Section 4501 of title 5, United States Code.

§ 451.204 Definitions.

In this subpart, terms are defined as follows:

"*Contribution*" means a suggestion, an invention, a meritorious action or other personal or group effort that contributes to the efficiency, the economy, or other improvement of Government operations; or a special act or service in the public interest in connection with or related to official employment (5 U.S.C. 4503).

"*Honorary award*" means a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

"*Intangible benefits*" means benefits to the Federal Government that are very exceptional and cannot be measured or are difficult to measure in terms of dollars saved.

"*Meritorious action*" means any employee or group contribution which is highly exceptional and unusually outstanding and which is beyond or outside job responsibilities and performance standards.

"*Non-monetary award*" means an award tailored to meet special conditions and needs of an employee and/or organization. It usually has a monetary connotation for the agency but not for the employee.

"*Presidential award*" means an award granted by the President under Section 4504 of title 5, United States Code.

"*Special act or service*" under this part means a non-recurring contribution which is beyond or outside normal job responsibilities and performance standards; a single scientific achievement; or an act of heroism.

"*Special award*" or "*award*" means a monetary, an honorary, or a non-monetary award based on the tangible savings and/or intangible benefits to the Federal Government.

"*Tangible savings*" means savings to the Federal Government that can be measured in terms of dollars saved.

§ 451.205 Policy.

(a) The policy of the Special Awards Program shall be to:

(1) Grant recognition in keeping with the value of the contribution to the Federal Government;

(2) Consider employee contributions for application throughout the Federal Government; and

(3) Assure that awards are not used as a substitute for other personnel actions, or as a substitute for pay.

(b) A special award under this subpart shall be:

(1) Monetary, honorary, or non-monetary;

(2) Based on employee accomplishments and contributions that are clearly beyond or outside assigned job responsibilities and performance standards.

(c) Monetary awards based on tangible savings shall not exceed amounts indicated by the following scales:

(1) Awards of up to $10,000, based on tangible savings:

Tangible savings	Award
Up to $20,000	5% of savings.
$20,001 to $100,000	$1,000 plus 1.5% of savings over $20,000.
Over $100,000	$2,200 plus .25% of savings over $100,000 up to maximum award of $10,000.

(2) Awards over $10,000 based on tangible savings:

Savings (in millions)		
Savings will continue for 5 years or more. First year savings will be—	Savings that occur on a one-time basis will be—	Award
$5 to 7.4	$15	$15,000
$7.5 to 9.9	$20	$20,000
$10	$25	$25,000

(3) Presidential Awards based on tangible savings:

Savings (in millions)		
Savings will continue for 5 years or more. First year savings will be—	Savings that occur on a one-time basis will be—	Award
$20 or more	$75	$10,000 in addition to a $25,000 award, for a total of $35,000.

(d) In addition to special awards based on tangible savings under paragraphs (c) (1), (2) and (3) of this section, special awards may be granted for contributions having exceptional intangible benefits to the Government. OPM shall provide guidance to agencies regarding how to limit the use of monetary awards based on intangible benefits, and how they should be computed.

(e) OPM shall provide guidance to agencies regarding criteria for granting all honorary and non-monetary awards based on tangible savings and/or intangible benefits to Federal Government.

§ 451.206 Eligibility.

(a) A special award may be granted when the suggestion, invention, meritorious action or other personal or group effort:

(1) Meets the requirements under § 451.205 of this subpart;

(2) Benefits the Government as described in 5 U.S.C. 4503 and 4504;

(3) Was made while the contributor was a Government employee;

(4) Has been described in writing; and

(5) Has been approved by the benefiting organization at a management level higher than the individual who:

(i) Recommended use of the suggestion, invention, or meritorious acton; or

(ii) Recommend the award.

(b) Special awards shall not be mandatory.

§ 451.207 Payment.

(a) Awards paid under this subpart do not increase the rate of basic pay.

(b) When a special award is approved for an employee of another agency, arrangements shall be made to transfer funds to the employing agency. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs.

§ 451.208 Responsibilities of the Office of Personnel Management.

(a) OPM shall provide guidance to agencies on how the Special Awards Program should be carried out (5 U.S.C. 4506).

(b) OPM shall review, and following verification of savings or benefits and relationship of contributions to job requirements, approve or disapprove recommendations for all awards in excess of $10,000 on a case-by-case basis. OPM shall limit approval of all awards to denominations of $15,000, $20,000 and $25,000.

(c) The Director, OPM, shall advise the President on monetary and honorary Presidential awards for Government employees which shall only be granted under this subpart. A monetary Presidential award granted in addition to a $25,000 award made under 5 U.S.C. 4503 shall be for $10,000.

§ 451.209 Agency responsibilities.

(a) The head of each agency shall establish an agency Special Awards Program that seeks to gain maximum benefits for the Government through improved employee motivation and productivity by providing for:

(1) The greatest motivational impact by allocating an adequate budget, staffing, and support services to assure prompt action on special award recommendations, and effective promotion and publicity activities;

(2) Delegation of authority and responsibility for approval of special awards to the appropriate managment level;

(3) Special award recommendations involving the minimum amount of paperwork and processing which show that criteria are met and expenditure of appropriated funds for the award is justified;

(4) Central administration and review of the agency-wide program, including systematic evaluation, planning, and feedback reports to management officials and employees;

(5) The granting of special awards as soon as possible after an assessment of the contribution indicates that an award should be granted;

(6) Time limits for processing special award recommendations and granting of special awards;

(7) The integrity of the program by reviewing agency program results to assure that special awards are granted equitably, on the basis of the tangible savings and/or intangible benefits to the Government; that action is taken to grant special awards in a timely manner; and that information is made available concerning persons who have received special awards and the reason(s) why each award is granted;

(8) Documentation in the Official Personnel Folder to reflect the nature of a special award, including the amount of a monetary award;

(9) Due weight to a special award when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362; and

(10) Consideration of accomplishments and adopted ideas for wider application both within the agency and Governmentwide, and prompt referral when appropriate.

(b) Each agency head may delegate the responsibilities in § 451.209(a) of this subpart as deemed appropriate for his or her organization.

(c) The head of each agency shall transmit to OPM:

(1) Award recommendations over $10,000;

(2) All recommendations for Presidential awards; and

(3) An annual report on program activities for the past fiscal year.

Subpart C—Regulatory Requirements of the Office of Personnel Management for Productivity Benefit Sharing Programs [Reserved]

PART 470—PERSONNEL MANAGEMENT RESEARCH PROGRAMS AND DEMONSTRATIONS PROJECTS

Subpart A—General Provisions

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AUTHORITY: 5 U.S.C. 4706.

SOURCE: 48 FR 2736, Jan. 21, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 470.101 Statutory authority.

(a) Section 4702, title 5, United States Code, provides the Office of Personnel Management (OPM) with the authority to:

(1) Establish and maintain, and assist in the establishment and maintenance of, research programs to

study improved methods and technologies in Federal personnel management;

(2) Evaluate the research programs established under paragraph (a)(1) of this section;

(3) Establish and maintain a program for the collection and public dissemination of information relating to personnel management research, and for encouraging and facilitating the exchange of information among interested persons and entities; and

(4) Carry out the preceding functions directly or through agreement or contract.

(b) Section 4703, title 5, United States Code, provides OPM with the authority to conduct and evaluate demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.

(c) This part supplements and implements the provisions of chapter 47 of title 5, United States Code, relating to the conduct of personnel research programs and demonstration projects, and must be read together with those provisions of law.

§ 470.103 Definitions.

In this part:

"Demonstration Project" means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management (5 U.S.C. 4701). The project must require the waiver of a provision of law, rule, or regulation which is eligible for waiver under the demonstration authority contained in 5 U.S.C. 4703. A project which can be undertaken under an agency's own authority and does not require the waiver of a provision of law, rule, or regulation is not considered a "demonstration project" for purposes of this part.

"Research" means systematic, intensive study directed toward fuller scientific knowledge or understanding of the subject studied. Activities classified as research are structured experimental or descriptive investigations conducted according to sound methodological principles.

"Research Program" means a planned study of the manner in which public management policies and systems are operating or have operated, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

Subpart B—Regulatory Requirements Pertaining to Research Programs

§ 470.201 Purposes of research programs.

The purposes of research programs undertaken under this subpart are to stimulate and conduct personnel management research which:

(a) Develops new knowledge, techniques, and materials about personnel management;

(b) Seeks solutions to personnel management problems;

(c) Provides a factual base to support existing or proposed changes in personnel management policies, techniques, and materials;

(d) Modifies or develops personnel management systems which improve the management of the Federal Government's human resources;

(e) Gathers, makes explicit, systematizes, and transmits the knowledge and techniques of practicing managers for the guidance of others and as a factual basis for research needs determination;

(f) Develops new methods or provides new standards for conducting personnel management research; or

(g) Designs systems for the assessment and transmittal of relevant personnel management strategies.

§ 470.203 Eligible parties.

Research may be conducted by the Office of Personnel Management, or under contract or agreement, as appropriate, by:

(a) Federal agencies;

(b) State and local governments;

(c) Institutions of higher education; or

(d) Other public or private institutions or organizations, profit or nonprofit.

§ 470.205 Initiation of research programs.

OPM will announce opportunities for research contracts by issuing Requests for Proposals (RFP's) in accordance with Federal procurement regulations. Unsolicited proposals may be accepted; however the relevance of the proposed research to OPM research needs will determine the acceptability of the proposal.

Subpart C—Regulatory Requirements Pertaining to Demonstration Projects

§ 470.301 Program expectations.

(a) Demonstration projects permit the Office of Personnel Management and Federal agencies to test alternative personnel management concepts in controlled situations to determine the likely effects and ramifications of proposed changes before putting them into general effect. OPM will assist agencies, within available resources, in developing projects which demonstrate new or improved personnel methods.

(b) The demonstration project must be proposed in a research context. The project plan must include a research design which contains:

(1) Measurable goals or objectives;

(2) Acceptable expected results or outcomes;

(3) A description of the procedures, methods and techniques to be demonstrated in achieving the desired goals or objectives;

(4) An evaluation section describing the data collection and analysis procedures to be used to assess the success or failure of the project from a qualitative and quantitative standpoint; and

(5) An itemization of all costs and benefits associated with the project, to the agency, the Government, and the community.

(c) OPM may establish and maintain activities which publish, exchange and apply the results of demonstration projects.

(d) OPM may seek legislation, or to the extent already authorized by law, make changes in regulation to implement permanently successful procedures, techniques, new management knowledge, and materials which improve personnel management programs or techniques.

§ 470.303 Eligible parties.

(a) Any Federal agency, or groups of two or more Federal agencies, eligible to propose demonstration projects under 5 U.S.C. 4701(a)(1) and 4701(b) may conduct demonstration projects after approval by the Office of Personnel Management and required Congressional and public review.

(b) While only a Federal agency may propose and conduct a demonstration project, the agency may be assisted in the development and evaluation of the project under contract or agreement with public or private institutions and organizations.

§ 470.305 Submission of proposals for demonstration projects.

(a) OPM will accept project proposals at any time. However, OPM may delay action for a reasonable amount of time on submitted proposals until comparisons can be made with other existing projects or with project proposals of a similar nature not yet received by OPM but known to be under development.

(b) Agencies must submit the project proposal in the form of a project plan to OPM for approval. OPM will prescribe the content of a project plan in its guidance and instructions, which at a minimum will contain the items identified in 5 U.S.C. 4703(b)(1) and 5 CFR 470.301(b).

(c) Agencies will outline, at the time proposed demonstration projects are submitted to OPM for approval, what discussions of the project have been held with labor organizations which have been accorded exclusive recognition for bargaining units containing employees involved in or affected by the proposed demonstration project.

(d) OPM may combine and evaluate similar project proposals received from different agencies as a single project, with the approval of the agencies involved.

§ 470.307 Notification responsibilities.

(a) 5 U.S.C. 4703 requires notification of tentatively approved demonstration project plans to Congress, employees, labor organizations, and the public.

(b) OPM shall:

(1) Notify each House of the Congress 180 days in advance of the beginning of each project; and

(2) Publish each tentatively approved project plan as a notice in the FEDERAL REGISTER.

(c) Each agency having a tentatively approved project plan shall:

(1) Notify and make available copies of the project plan to:

(i) All employees who may be interested in or affected by the activities of the demonstration project; and

(ii) All labor organizations accorded exclusive recognition for bargaining units which include employees in or affected by the project plan.

(2) Certify to OPM in writing when and how the requirements of § 470.307(c)(1) were carried out and document the manner in which it insured that all affected employees were notified.

(3) Observe the consultation and negotiation requirements of 5 U.S.C. 4703 (f) and (g).

§ 470.309 Public hearing.

(a) *Notice of public hearing.* OPM shall hold a public hearing no less than 30 days after the date of its notice in the FEDERAL REGISTER during which interested persons or organizations may present their written or oral views concerning the proposed demonstration project. The notice of public hearing shall be published in the FEDERAL REGISTER and shall:

(1) State the date, time, place and purpose of the hearing;

(2) Describe briefly the project;

(3) Indicate where more information and a copy of the project plan may be obtained;

(4) State the name and address of the person who will receive written comments from those unable to attend the hearing; and

(5) Indicate the date by which written comments must be received to be considered.

(b) *Nature of public hearing.* The hearing will be informal to encourage effective oral presentations by interested individuals and organizations. The presiding officer, designated by the Director, OPM, shall in his or her reasonable discretion regulate the course of the proceedings and the conduct of those present at the hearing by appropriate means.

(c) A written summary shall be made of the oral evidence.

(d) The record shall be left open for 2 weeks after the conclusion of the hearing to receive additional written data, views, and arguments from the parties participating in the hearing.

§ 470.311 Final project approval.

(a) The Office of Personnel Management will consider all timely relevant oral and written views, arguments, and data before final approval or disapproval of a project plan. OPM may request that the agency modify the tentatively approved project plan before final approval because of comments and data received from the Congress, the public, labor organizations, and affected employees. OPM will not permit the agency to implement the project until all required consultation or negotiation has been completed, including the conclusion of impasse resolution and negotiability disputes.

(b) The Office of Personnel Management shall provide a copy of the final version of the project plan to each House of the Congress at least 90 days in advance of the date the project is to take effect.

(c) Agencies involved in the project shall communicate the content of the final project plan to:

(1) Labor organizations and affected employees; and

(2) Individuals and groups known to be interested in the project's activities.

§ 470.313 Project implementation regulations.

Agencies will prepare demonstration project implementing regulations, as appropriate, to replace Governmentwide statutes and regulations waived for the project. Demonstration project implementing regulations issued pursuant to an OPM-approved demonstration project must be approved by OPM and shall have full force and authority pursuant to Title VI of the Civil Service Reform Act of 1978.

§ 470.315 Project modification and extension.

OPM-approved projects permit the testing of alternative personnel systems and procedures in accordance with the provisions of the project plan. The provisions of approved project plans will not be modified, duplicated in organizations not listed in the project plan, or extended by agencies to individuals or groups of employees not included in the project plan without the approval of the Office of Personnel Management. OPM will inform the agency of notification responsibilities under § 470.307. The extent of notification requirements will depend on the nature and extent of the requested project modification.

§ 470.317 Project evaluation.

(a) *Compliance evaluation.* OPM will review the operation of the project periodically to determine its compliance with the requirements of this part and the approved project plan. If OPM determines that an agency is not meeting legal, regulatory, or project plan requirements, it may, as appropriate, direct the agency to take corrective action or terminate the project.

(b) *Results evaluation.* All approved project plans will contain an evaluation section to measure the impact of the project results in relation to its objectives and to determine whether or not permanent changes in law and/or regulation should be considered or proposed. Where the project plan provides for agency evaluation of project results, OPM will review those project evaluation efforts, may conduct evaluations of its own, on a sample basis, to verify results, and may report its own conclusions. If OPM or the agency determines that an experiment is creating a substantial hardship on, or is not in the best interest of, the public, the Federal Government, employees, or eligibles, even though the experiment is being conducted properly, OPM or the agency may jointly or unilaterally terminate the project.

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

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511.701 Effective dates generally.
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511.703 Retroactive effective date.

AUTHORITY: 5 U.S.C. 5115, 5338, 5351, unless otherwise noted.

SOURCE: 33 FR 12445, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 511.101 Definitions.

In this part:

(a) "Agency" and "employee" have the meanings given them by section 5102 of title 5, United States Code.

(b) "Class" means all positions which are sufficiently similar as to (1) kind or subject-matter of work, (2) level of difficulty and responsibility, and (3) the qualification requirements of the work, to warrant similar treatment in personnel and pay administration.

(c) "Classification" means the analysis and identification of a position and placing it in a class under the position-classification plan established by OPM under chapter 51 of title 5, United States Code.

(d) "Grade" means all classes of positions which (although different with respect to kind or subject-matter of work) are sufficiently equivalent as to (1) level of difficulty and responsibility, and (2) level of qualification requirements of the work, to warrant their inclusion within one range of rates of basic pay.

(e) "Position" means the work, consisting of the duties and responsibilities, assigned by competent authority for performance by an employee.

Subpart B—Coverage of the General Schedule

§ 511.201 Coverage of and exclusions from the General Schedule.

This part and chapter 51 of the title 5, United States Code, apply to all positions in the agencies except those specifically excluded by section 5102 of title 5, United States Code. (5 U.S.C. 5102)

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54693, Sept. 21, 1979]

§ 511.202 Authority of agency.

Subject to the provisions of Subpart F of this part and § 511.203, an agency may determine whether a position is subject to, or is excluded from, chapter 51 of title 5, United States Code, by section 5102(c) (7) and (8) thereof.

§ 511.203 Exercise of authority.

An agency may exercise the authority under § 511.202 only in accordance with guidelines and standards issued by OPM.

Subparts C-E—[Reserved]

Subpart F—Classification Appeals

SOURCE: 46 FR 9913, Jan. 30, 1981, unless otherwise noted.

§ 511.601 Applicability of regulations.

This subpart applies to a request from an employee or an agency for the Office to review the classification of a position subject to chapter 51 of title 5, United States Code, or for the Office to determine whether a position is subject to that chapter.

§ 511.602 Notification of classification decision.

An employee whose position is reclassified to a lower grade which is based in whole or in part on a classification decision is entitled to a prompt written notice from the agency. This includes employees who are eligible for retained grade or pay. If the reclassification is due to an Office classification certificate issued under the authority of 5 U.S.C. 5110, the agency will also explain the reasons for the reclassification action to the employee. This notice shall inform the employee:

(a) Of his or her right to appeal the classification decision to the agency (if the agency has an established appeal system and it has the authority to review the classification decision), or to the Office as provided in this subpart if such an appeal has not already been made;

(b) Of the time limits within which the employee's appeal must be filed in order to preserve any retroactive benefits under § 511.703; and

(c) Any other appeal or grievance rights available under applicable law, rule, regulation or negotiated agreement.

§ 511.603 Right to appeal.

(a) *Employee appeal.* An employee, or the employee's designated representative acting on behalf of an employee, may request an Office decision as to:

(1) The appropriate occupational series or grade of the employee's official position.

(2) The inclusion under or exclusion from chapter 51 of title 5, United States Code, of the official position by the employee's agency or the Office, except in the case of a position located in the Office of the Architect of the Capitol.

(b) *Agency appeal.* The head of an agency, or an authorized representative, may appeal any classification certificate issued by the Office under sections 5103 or 5110 of title 5, U.S.C., with respect to any position in the agency.

§ 511.604 Filing an appeal.

(a) *Employee.* An employee may appeal by writing to the Office directly, or by forwarding the appeal through the employing agency.

(b) Referral of an employee appeal to the Office. An agency shall forward, within 60 calendar days of its receipt in the agency, and employee's appeal filed through the agency to the Office when:

(1) The employee has directed the appeal to the Office and the agency's written decision is not favorable; or

(2) The agency is not authorized to act on the employee's appeal; or

(3) The agency has not decided the appeal within the established time period.

§ 511.605 Time limits.

(a) *Employees.* (1) An employee may submit an appeal of his or her official position at any time. If the employee has suffered a loss in grade or pay, is not entitled to retained grade or pay, and desires retroactive adjustments, the time limits in § 511.703 must be observed.

(2) If the employee is appealing an agency decision or an Office classification certificate issued under 5 U.S.C. 5103 or 5110, the employee shall promptly appeal if he or she disagrees with the classification certificate. Employees must meet the time limits provided in § 511.703 in order to preserve the right to retroactive adjustment.

(b) *Agency.* An agency may appeal an Office classification certificate issued under authority of section 5103 or 5110 of title 5, United States Code, at any time. Heads of agencies should appeal prior to the implementation date of the certificate if they disagree with the classification rationale.

(c) *Reconsideration.* An employee or agency may request reconsideration of an Office appellate decision. The request must be in writing, and filed not later than 45 calendar days after the decision is issued. This time limit may be waived under exceptional circumstances by either the Classification Appeals Office or the Director.

§ 511.606 Form and content of an appeal.

(a) *Employee appeal.* An employee's appeal shall be in writing, and shall contain the reasons why the employee believes his or her position is erroneously classified, or should be brought under or excluded from chapter 51 of title 5, United States Code. The agency, when forwarding the employee's appeal or when requested by the Office, shall furnish all relevant facts concerning the position and the agency's justification for its classification decision. The agency shall also comment on the information submitted by the employee if requested to do so by the Office. Either the employee or agency may submit relevant information to the Office at any time following the initial filing of an appeal.

(b) *Agency appeal.* An agency's appeal shall be in writing, and shall contain its reasons and justification for requesting a review of the Office's certificate.

(c) *Inspection of the Office's appellate record.* The employee, an employee's representative and the agency will be permitted to inspect the Office's appellate record on request. Agencies will make available to appellants copies of any and all information submitted by the agency to the Office with respect to the appellant's individual appeal.

§ 511.607 Nonappealable issues.

(a) The following issues are not appealable to the Office under this subpart. Such issues may be reviewed under administrative or negotiated grievance procedures if applicable:

(1) The accuracy of the official position description including the inclusion or exclusion of a major duty in the official position description. When the accuracy of the official position description is questioned by the employee, the employee will be directed to review this matter with his or her supervisor. If management and the employee cannot resolve their differences informally, the accuracy of the

position description should be reviewed in accordance with administrative or negotiated grievance procedures. If the accuracy of the position description cannot be resolved in this manner, the Office will decide the appeal on the basis of the actual duties and responsibilities assigned by management and performed by the employee;

(2) An assignment or detail out of the scope of normally performed duties as outlined in the official position description;

(3) The accuracy, consistency or use of agency supplemental classification guides; or,

(4) The title of the position unless a specific title is authorized in a published Office classification standard or guide, or the title reflects a qualification requirement or authorized area of specialization.

(b) The following issues are neither appealable nor reviewable;

(1) The class, grade, or pay system of a position to which the employee is not officially assigned by an official personnel action;

(2) An agency's proposed classification decision;

(3) The class, grade, or pay system of a position to which the employee is detailed or temporarily promoted; employees serving under term promotions in accordance with § 335.102(g) of this title may appeal the classification of their position to the Office under these procedures.

(4) The classification of the employee's position based on position-to-position comparisons and not standards;

(5) The accuracy of grade level criteria contained in an Office classification guide or standard; or

(6) A classification decision that has been issued by the Office under this subpart when there has been no change in the governing classification standard(s) or the major duties of the position.

§ 511.608 Employee representatives.

An employee may select a representative of his or her choice to assist in the preparation and presentation of an appeal. An agency may disallow an employee's representative when the individual's activities as a representative would cause a conflict of interest or position; an employee who cannot be released from his or her official duties because of the priority needs of the Government; or an employee whose release would give rise to unreasonable costs to the Government.

§ 511.609 Ascertainment of facts.

The employee, a designated representative, and the agency shall furnish such facts as may be requested by the Office within the time frames specified. The facts shall be in writing when so requested. The Office, in its discretion, may investigate or audit the position. A representative may not participate in OPM on-site audits unless specifically requested to do so by the Office.

§ 511.610 Notification.

The Office shall notify the employee, or a representative if one is designated, and the agency in writing of its decision.

§ 511.611 Cancellation of an employee appeal.

An employee's appeal shall be cancelled and the employee so notified in writing in the following circumstances:

(a) On receipt of the employee's written request for cancellation.

(b) On failure to prosecute, when the employee or the designated representative does not furnish requested information, or proceed with the advancement of the appeal.

The Office may at its discretion reopen a cancelled appeal on a showing that circumstances beyond the control of the employee prevented pursuing the appeal.

§ 511.612 Finality of decision.

An appellate decision made by the Office is final unless reconsidered by the Office. There is no further right of appeal. The Office may reconsider a decision at its discretion. The decision shall constitute a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Agencies shall review their own classification decisions for identical, similar or related positions to insure consistency with the Office's certificate.

§ 511.613 Classification Appeals Office.

The Office's Classification Appeals Office may, at its discretion, reopen and reconsider a certificate issued under this subpart.

(a) The Classification Appeals Office may remand to the respective region of the Office any request for reconsideration which requires extensive fact-finding or investigation. Requests which contain new and material information, or disagreements over the significance of information, will be remanded to the regional deciding official for a decision.

(b) The Classification Appeals Office may reopen and reconsider a decision only when written argument or evidence is presented which establishes a reasonable doubt concerning the technical accuracy of the decision.

§ 511.614 Review by the Director.

The Director may, at his or her discretion, reopen and reconsider any decision when written argument or evidence is submitted which tends to establish that:

(a) The previous decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy:

(b) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Director.

§ 511.615 Temporary compliance authority.

Agencies may use temporary or conditional compliance action, e.g., a temporary promotion or a temporary reassignment when available, if:

(a) A position has been certified by the Office under either section 5110 or 5112 of title 5, United States Code;

(b) The certificate has not been suspended; and,

(c) The agency or employee has requested reconsideration.

This authority will not be used if the position has been downgraded and the employee is entitled to retained grade under section 5362 of title 5, United States Code.

§ 511.616 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) the classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under this part. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502)

[50 FR 3313, Jan. 24, 1985]

Subpart G—Effective Dates of Position Classification Actions or Decisions

Source: 46 FR 9915, Jan. 30, 1981, unless otherwise noted.

§ 511.701 Effective dates generally.

(a) *Agency classification actions.* (1) A classification action is a determination to establish or change the title, series, grade or pay system of a position based on application of published position classification standards or guides. This is a position action.

(i) The effective date of a position action taken by an agency shall be the date an official with properly delegated authority approves (certifies) the proposed classification. This is accomplished when the authorized official(s) signs the allocation of the position.

(ii) The effective date of a position action may be extended to correspond with the effective date of the personnel action when:

(A) The position is being changed to lower grade or pay; and

(B) The employee occupying the position is eligible for retained grade or pay under 5 U.S.C. 5362-5363.

(iii) These provisions do not pertain to Merit Pay System determinations made under Part 540 of this title.

(2) A position action is implemented by a personnel action. The personnel action must occur within a reasonable period of time following the date of the position action.

(3) If the position action requires a personnel action which will result in a loss of grade or pay to the occupant of the position, the agency must advise the employee, in writing, of the position action and the proposed date of the personnel action. This notice shall be issued prior to taking a personnel action.

(4) Except as provided in § 511.703, classification actions may not be made retroactive.

(b) *Office of Personnel Management's classification decision.* (1) The effective date of a classification decision made by means of a certificate issued under the authority of section 5110, title 5, United States Code is not earlier than the date of the certificate, and not later than the beginning of the fourth pay period following the date of the certificate, unless a subsequent date is specifically stated in the certificate. Except as otherwise provided by this paragraph the filing of an appeal of such a certificate does not delay its effective date.

(2) The implementation of the certificate may be suspended when it is determined before its effective date that a review of the classification decision is warranted and suspension is desirable. The determination to suspend implementation may be made by:

(i) A regional director, or a designee, when the decision is made by the regional office; or,

(ii) The Assistant Director, Agency Compliance and Evaluation, or a designee, when the decision is made within the central office or by a region, or

(iii) The Director with respect to any classification decision.

Suspending the implementation of a certificate does not automatically change the effective date except when the certificate requires that the grade or pay of the position be reduced and the employee is not entitled to retained grade or pay.

(3) When the original decision requires that the grade or pay of the position be reduced and the employee is not entitled to retained grade or pay the reviewing authority shall issue a new certificate if it sustains the original decision. Since demotions cannot be made retroactive, the effective date of the new certificate shall be not earlier than the date of the certificate, and not later than the beginning of the fourth pay period after the date of the certificate unless a subsequent date is specifically stated in the certificate.

§ 511.702 Agency or Office classification appeal decisions.

(a) Subject to § 511.703, the effective date of a change in the classification of a position resulting from a classification appeal decision by either an agency or the Office is not earlier than the date of the decision and not later than the beginning of the fourth pay period following the date of the decision, except when a subsequent date is specifically provided in the decision.

(b) The implementation of the decision may be suspended by the Office when it determines before the effective date that a review of the decision is warranted. The determination to suspend implementation may be made by:

(1) The regional director, or a designee, when the appellate decision is made by an agency under the jurisdiction of the region; or

(2) The Assistant Director, Agency Compliance and Evaluation, or the Chief, Classification Appeals Office when the appellate decision is made

within the central office, by a region or by an agency; or

(3) The Director with respect to any appellate decision.

Suspending the implementation does not change the effective date of the decision except when the original decision requires that the grade or pay of the position be reduced and the employee is not entitled to grade or pay retention.

(c) When the original decision requires that the grade or pay position be reduced and the employee is not entitled to grade or pay retention, the reviewing authority, if sustaining the original decision, shall issue a new certificate and the effective date of the new certificate shall be not earlier than the date of the new decision and not later than the beginning of the fourth pay period following the date of the new decision, unless a subsequent date is specifically stated in the new decision.

§ 511.703 Retroactive effective date.

(a) *Applicability.* A retroactive effective date may be required only if the employee is wrongfully demoted.

(b) *Downgrading.* (1) The effective date of a classification appellate certificate or agency appellate decision can be retroactive only if it corrects a classification action which resulted in a loss of grade or pay. In order for the decision to be made retroactive, the employee must file the initial request for review with either the agency or the Office not later than 15 calendar days after the effective date of the reclassification action.

(2) However, if the appellate decision raises the grade of the position above the original grade, retroactivity will apply only to the extent of restoration to the original grade.

(3) The right to a retroactive effective date provided by this section is preserved on subsequent appeals from an agency or Office classification decision when the subsequent appeal is filed not later than 15 calendar days following receipt of written notification of a final agency administrative decision or 15 calendar days after the effective date of the action taken as a result of the classification decision, whichever is later.

(c) *Grade change based on new duties and responsibilities.* Retroactivity may be based only on duties and responsibilities existing at the time of demotion and cannot be based on duties and responsibilities assigned later.

(d) *Retroactivity when time limits are extended.* The right to a retroactive effective date provided by this section may be preserved at the discretion of the Office, on a showing by the employee that he or she was not notified of the applicable time limit and was not otherwise aware of it, or that circumstances beyond his or her control prevented filing an appeal within the prescribed time limit.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

Subparts A-B—[Reserved]

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

Sec.
530.301 Applicability.
530.302 Authority.
530.303 Establishing and adjusting special salary rate schedules.
530.304 Annual review.
530.305 Revising or discontinuing special salary rate schedules.
530.306 Determining employee rates.

AUTHORITY: 5 U.S.C. 5303; E.O. 11721, as amended.

Subparts A-B—[Reserved]

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

SOURCE: 50 FR 32841, Aug. 15, 1985, unless otherwise noted.

§ 530.301 Applicability.

Except as provided in § 530.302(b) of this subpart, this subpart applies to agencies having positions that would otherwise be covered by (a) the General Schedule, under section 5332(a) of title 5, United States Code; (b) the pay scales for certain employees in the Department of Medicine and Surgery of the Veterans Administration, under chapter 73 of title 38, United States

Code; and (c) the pay schedules for personnel paid under section 403 of the Foreign Service Act of 1980.

§ 530.302 Authority.

(a) In lieu of the pay schedules identified in § 530.301, the Office of Personnel Management (OPM) may establish, and agencies must pay, special salary rates under section 5303 of title 5, United States Code, Executive Order 11721, and this subpart.

(b) The Veterans Administration may use other authorities to establish and pay special salary rates. Special salary rates may be established for (1) Department of Medicine and Surgery General Schedule employees providing direct patient care or services incident to direct patient care under 38 U.S.C. 4107(g); (2) employees who are Veterans Administration police officers providing services under section 218 of title 38 of the United States Code; and (3) nurses and certain other employees of the Department of Medicine and Surgery appointed under chapter 73 of title 38, United States Code.

§ 530.303 Establishing and adjusting special salary rate schedules.

(a) OPM may increase the minimum rates otherwise payable under the pay schedules identified in § 530.301 in one or more areas or locations to the extent it considers necessary to overcome significant handicaps in the recruitment and retention of well-qualified personnel when these handicaps result from pay rates in private enterprise that are substantially above the pay rates of those schedules. When a minimum rate is increased under this authority, increases may also be made in one or more of the remaining rates of the affected grade or level. In no event may an increased minimum rate exceed the maximum rate prescribed by law for the grade or level. Notice of these special salary rate schedules will be published in the FEDERAL REGISTER. Comments will normally be invited on special salary rate proposals.

(b) An agency may propose to OPM that special salary rates be established or adjusted. The agency initiating such a request, and all other agencies wishing to be included, are responsible for submitting complete supporting data, as specified by OPM, including, after consulting with OPM, a survey of prevailing pay rates in private enterprise in the relevant labor market.

(c) All requests to establish or adjust special salary rate schedules must be transmitted directly to OPM's central office by the agency's headquarters. Each request must include a certification by the head of the agency that the special salary rates are necessary to ensure staffing adequate to the accomplishment of the agency's mission and that funds are available to cover the increased expenditures for salaries and benefits that would result from the approval of the request. (If the special salary rate request covers fewer that 200 employees and would increase annual salary costs by less than $200,000, this certification may be provided by a headquarters official designated to act on behalf of the head of the agency.)

(d) In establishing or adjusting special salary rate schedules, OPM considers—

(1) The number of vacant positions and the length of time they have been vacant;

(2) The number of employees who have quit, including the number quitting for higher paying positions in private enterprise;

(3) The number of vacancies the agency tried to fill compared with the number of hires and offers made;

(4) The degree to which the agency has considered relevant non-pay solutions to the staffing problems, such as conducting an adequate recruiting program, using appropriate appointment authorities, redesigning jobs, establishing training programs, and improving working conditions;

(5) The impact of the staffing problem on the agency's mission; and

(6) The level of rates paid by private enterprise for comparable positions.

(e) In determining at what level to set special salary rates, OPM considers—

(1) The level of rates it believes necessary to recruit or retain an adequate number of well-qualified persons;

(2) The offsetting costs that will be incurred if special salary rate schedules are not authorized; and

(3) The level of rates paid by private enterprise for comparable positions.

(f) No one factor or combination of factors specified in paragraphs (d) or (e) of this section requires special salary rate schedules to be established or to be adjusted to any given level. Each agency request to establish or adjust special salary rate schedules is judged on its own merits based on the extent to which it meets the criteria specified in paragraphs (c) and (d) of this section.

§ 530.304 Annual review.

(a) OPM reviews special salary rate schedules annually to determine whether there is a continuing need for them. Notice of adjustments to existing special salary rate schedules made as a result of this review will be published in the FEDERAL REGISTER. Comments will normally be invited on proposed adjustments.

(b) In conducting the annual review, OPM will designate lead agencies for assistance in coordinating the collection of relevant data. All agencies are responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.

(c) An adjustment in a pay schedule identified in § 530.301 has no effect on special salary rate schedules authorized under this subpart. However, except for an employee receiving a rate of basic pay under Part 540 of this chapter, a special salary rate may not be less than the rate for the corresponding numerical step or rate in the regular rate range for the grade or level involved.

§ 530.305 Revising or discontinuing special salary rate schedules.

OPM and agencies shall initiate action to discontinue or revise special salary rate schedules when it is determined that these schedules are no longer needed, or no longer needed at existing levels, to ensure satisfactory recruitment and retention. No employee's pay shall be reduced because of such discontinuation or revision. Notice of decreased or discontinued schedules will be published in the FEDERAL REGISTER and comments will be invited on these proposed adjustments.

[50 FR 40178, Oct. 1, 1985]

§ 530.306 Determining employee rates.

(a) *Initial establishment and increases.* (1) Except as otherwise provided in this section, when an employee is in a position to which a special rate schedule becomes initially applicable or for which the special salary rate schedule is increased, the agency shall fix the empoloyee's rate of basic pay at the step in the new or increased special salary rate schedule that corresponds to the employee's existing numerical step or rate of the grade or level.

(2) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by an employee who is receiving basic pay at a rate in excess of the maximum rate of the applicable rate schedule, the agency shall increase the employee's rate of basic pay as follows:

(i) If the employee is retaining a rate under Part 536 of this chapter or section 3594 of title 5, United States Code, the agency shall increase the employee's rate of basic pay by an amount equal to 50 percent of the increase in the maximum rate of the applicable rate range, except as provided in § 536.205(d).

(ii) If the employee is retaining a rate under an authority other than Part 536 of this chapter (including a retained special rate resulting from the reduction or termination of a special salary rate schedule before the first day of the first pay period beginning on or after January 11, 1979), or section 3594 of title 5, United States Code, the agency shall increase the employee's rate of basic pay by the amount of the increase in the maximum rate of the applicable rate range.

(3) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by an employee covered by the Performance Management and Recognition System, the employee's rate of basic pay shall be determined under § 540.106.

(b) *Decreased and discontinued rates.* (1) Except as provided in paragraph (b)(2) of this section, when the special salary rate schedule for a position is discontinued or decreased, the agency shall determine the rate of basic pay for an employee in the position as follows:

(i) If the employee is receiving a rate of basic pay equal to one of the rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at that rate.

(ii) If the employee is receiving a rate of basic pay at a rate between two rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at the higher of the rate.

(iii) If the employee is receiving a rate of basic pay at a rate in excess of the maximum rate for the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at his or her existing rate, and the employee shall be entitled to this rate as provided in § 536.104(a)(3).

(2) If the employee is receiving a rate of basic pay established under Part 540 of this chapter, the employee shall receive his or her existing rate. This rate may be lower than the minimum rate of the regular schedule as provided in § 540.106(c)(3). If the employee's existing rate exceeds the maximum rate for the regular or decreased special salary rate schedule for the employee's grade or level, the employee shall be entitled to the existing rate, as provided in § 536.104(a)(3).

(c) *Initial appointments.* (1) The agency shall determine the rate of basic pay for an individual receiving an initial appointment (including an appointment after a break in service of at least 1 workday) to a position to which a special salary rate schedule applies under the regulations governing the pay system under which the employee is appointed without regard to the special salary rate schedule, and shall use the step or rate thus determined to fix the employee's rate at the corresponding step or rate in the special salary rate schedule.

(2) A special salary rate may not be considered an employee's highest previous rate, except as provided in § 531.203(d)(3).

(d) *General exception.* Except as provided in paragraphs (e), (f), and (g) of this section, all other actions of promotion, reduction in grade, transfer, or reassignment are governed by the pay-fixing rules established for the appropriate pay system to which, or in which, the personnel action is taken.

(e) *Reassignments and transfers.* When an employee is reassigned or transferred at the same pay system to a position to which a special salary rate schedule applies, the agency shall fix the employee's rate in the special salary rate schedule at the step or rate in the special salary rate schedule for the employee's grade or level which corresponds to the employee's existing numerical step or rate in the salary rate schedule for the employee's grade or level.

(f) *Promotions.* When an employee in a position to which a special salary rate schedule does not apply is promoted to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the higher grade or level without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which promoted.

(g) *Reductions in grade.* When an employee not entitled to a retained grade or rate under appropriate authority is reduced in grade to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the lower grade without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which reduced.

[50 FR 40178, Oct. 1, 1985]

PART 531—PERFORMANCE BASED INCENTIVE SYSTEM FOR THE GENERAL SCHEDULE

NOMENCLATURE CHANGE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subpart A—[Reserved]

Subpart B—Determining Rate of Basic Pay

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531.201 Applicability.
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Subpart C—Pay Adjustments for Supervisors

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531.401 Principal authorities.
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531.503 Purpose of quality step increases.
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Subpart F—Performance Awards

531.601 Applicability.
531.602 Purpose of performance awards.
531.603 Coverage.
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531.605 Policy.
531.606 Eligibility.
531.607 Payment.
531.608 Responsibilities of the Office of Personnel Management.
531.609 Agency responsibilities.

AUTHORITY: 5 U.S.C. 5115, 5338, and Chapter 54, unless otherwise noted.

SOURCE: 33 FR 12448, Sept. 4, 1968, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Determining Rate of Basic Pay

SOURCE: 45 FR 65498, Oct. 3, 1980, unless otherwise noted.

§ 531.201 Applicability.

This subpart and sections 5333 and 5334 of title 5, United States Code, apply to employees and positions, other than Senior Executive Service positions, to which chapter 51 of title 5 applies, including employees under the Performance Management and Recognition System (PMRS) established under chapter 54 of title 5, United States Code.

[50 FR 35498, Aug. 30, 1985]

§ 531.202 Definitions.

In this subpart:

(a) "Demotion" means a change of an employee, while continuously employed, from:

(1) One General Schedule grade to a lower General Schedule grade, with or without reduction in pay; or

(2) A higher rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a lower rate within a General Schedule grade.

(b) "Agency" has the meaning given that word by section 5102 of title 5, United States Code.

(c) "Employee" means an employee of an agency to whom this subpart applies.

(d) "Existing rate of basic pay" means the rate received immediately before the effective date of a transfer, promotion, demotion, or within-grade increase.

(e) "Higher grade" means a General Schedule grade above the last previous General Schedule grade or its equivalent held by the employee.

(f) "Highest previous rate" means the highest rate of basic pay previously paid to an individual while employed in a position in a branch of the Federal Government (executive, legislative, or judicial), a mixed ownership corporation, or the government of the District of Columbia, irrespective of whether or not the position was subject to the General Schedule.

(g) "New appointment" means the first appointment, regardless of tenure, as an employee of the Federal Government or the Government of the District of Columbia.

(h) "Promotion" means a change of an employee, while continuously employed, from:

(1) One General Schedule grade to a higher General Schedule grade; or

(2) A lower rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a higher rate within a General Schedule grade.

(i) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

(j) "Reassignment" means a change of an employee, while serving continuously in the same agency, from one position to another without promotion or demotion.

(k) "Reemployment" means an employment, including reinstatement or another type of appointment, after a break in service of at least 1 full workday.

(l) "Transfer" means a change of an employee, without a break in service of 1 full workday, from one branch of the Federal Government (executive, legislative, or judicial) to another or from one agency to another.

§ 531.203 General provisions.

(a) *New Appointments.* Except as provided by section 5333(a) of title 5, United States Code, and paragraph (b) of this section, a new appointment is made at the minimum rate of the grade, or when the minimum rate of the grade of a position has been set under Part 530 of this chapter, a new appointment is made at the minimum rate set under Part 530 of this chapter.

(b) *Superior qualifications appointments.* (1) A "superior qualifications appointment" means an appointment to a position in Grade 11 or above of the General Schedule made, with the prior approval of the Office or under an agreement between the agency and the Office (except for positions in the Library of Congress), at a rate above the minimum rate of the appropriate grade under authority of section 5333 of title 5, United States Code because of the superior qualifications of the candidate.

(2) An agency may make a superior qualifications appointment by new appointment or by reemployment except that when made by reemployment, the candidate must have a break in service of at least 90 calendar days from his or her last period of Federal employment or employment with the Government of the District of Columbia (other than (i) employment under an appointment as an expert or consultant under section 3109 of title 5, United States Code, (ii) employment under a temporary appointment effected primarily in furtherance of a post-doctoral research program, or effected as part of predoctoral or postdoctoral training program during which the employee receives a stipend, or employment under a temporary appointment of a graduate student when the work performed by the student is the basis for completing certain academic requirements for an advanced degree, (iii) employment as a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or the Commissioned Corps of Public Health Service, (iv) employment which is neither full-time employment nor the principal employment of the candidate, or (v) appointment under the Intergovernmental Personnel Act.)

(c) *Maximum payable rate rules.* In determining an employee's rate of basic pay upon reemployment, reassignment, promotion, demotion, or change in type of appointment, the following rules apply unless the employee is entitled to a higher rate under the promotion provisions of section 5334(b) of title 5, United States Code, and § 531.204(a) of this subpart or the grade and pay retention provisions of sections 5362 and 5363 of title 5, United States Code, and Part 536 of this chapter:

(1) *For non-PMRS employees.* The maximum rate of basic pay that may be paid an employee *not* covered by the Performance Management and Recognition System shall be determined as follows:

(i) Compare the employee's highest previous rate (expressed as an annual rate) with the rates of basic pay *in effect at the time the highest previous rate was earned* for the grade in which pay is currently being fixed.

(ii) Identify the lowest step of the grade in which pay is currently being fixed, for which the rate of basic pay was equal to or greater than the employee's highest previous rate at the time the highest previous rate was earned.

(iii) Identify the current rate of basic pay for the step identified under paragraph (c)(1)(ii) of this section. This rate is the maximum rate of basic pay that may be paid the employee.

(2) *For PMRS employees.* The maximum rate of basic pay that may be paid an employee covered by the Performance Management and Recognition System shall be determined as follows:

(i) Compare the employee's highest previous rate (expressed as an annual rate) with the range of rates of basic pay *in effect at the time the highest previous rate was earned* for the grade in which pay is currently being fixed.

(ii) Divide the difference between the employee's highest previous rate and the minimum rate of the former rate range of the grade in which pay is currently being fixed by the difference between the maximum and minimum rates of that rate range.

(iii) Multiply the result by the difference between the maximum and minimum rates of the current rate range of the grade in which pay is currently being fixed.

(iv) Add the result to the minimum rate of the current rate range of the grade in which pay is currently being fixed and round to the next higher whole-dollar rate. The resulting rate is the maximum rate of basic pay that may be paid the employee unless that rate falls between two rates of pay on a numerical increment or rank merit pay schedule, in which case the employee may be paid at the higher rate.

(d) *Determination of higheest previous rate.* (1) The highest previous rate is based on a regular tour of duty at that rate under an appointment not limited to 90 days or less, or for the continuous period of not less than 90 days under one or more appointments without a break in service.

(2) The highest previous rate may not be based on (i) a rate received for an appointment as an expert or consultant under section 3109 of title 5, United States Code, or (ii) except as provided in paragraph (d)(3) of this section, a rate of basic pay established under section 5303 of title 5, United States Code.

(3) When an employee's rate of basic pay is one established under section 5303 of title 5, United States Code (referred to in this paragraph as a special rate), the employee's highest previous rate is the rate to which he or she would have been entitled had the special rate not applied to him or her. However, with the prior approval of the Office, an agency may use special rate as the highest previous rate when:

(i) The employee is reassigned to a position for which no special rate, or a lesser special rate, has been established; and

(ii) The agency head, or an employee specifically designated by the agency head for that purpose, determines that the need for the services of the employee, and his or her contribution to the program of the agency, will be greater in the position to which he or she is being reassigned. The reasons for the determinations required by this paragraph shall be submitted in writing to the Office with the request for prior approval.

(e) *Agency classification action.* When an agency regrades a position to a grade higher than the one to which the position had been classified by Office action, and when subsequent to the regrading, the Office again classifies the position to the grade which it had originally assigned the position, the rate attained by the employee in the higher grade may not be used as his or her highest previous rate.

(f) *Simultaneous actions.* When a position or appointment change and entitlement to a higher rate of pay occur at the same time, the higher rate of pay is deemed an employee's existing rate of basic pay. If an employee is entitled to two pay benefits at the same time, the agency shall process the changes in the order which gives the employee the maximum benefit.

(5 U.S.C. 5333-5334)

[45 FR 65498, Oct. 3, 1980, as amended at 46 FR 43823, Sept. 1, 1981; 50 FR 11794, Mar. 25, 1985; 50 FR 35495, 35499, Aug. 30, 1985]

§ 531.204 Special provisions.

(a) *Promotions and transfers.* (1) The requirements of section 5334(b) of title 5, United States Code, apply only to an employee who is promoted or transferred from a position in one grade of the General Schedule to a position in a higher grade of the General Schedule.

(2) In determining an employee's rate of basic pay in the grade of his or her position upon promotion to or from a position in which he or she is covered by the Performance Management and Recognition System, established under chapter 54 of title 5, United States Code, the following rules apply unless the employee is receiving a retained rate under section 5363 of title 5, United States Code, or Part 536 of this chapter:

(i) When an employee not covered by the Performance Management and Recognition System is promoted from a position in one grade of the General Schedule to a position in a higher grade of the Performance Management and Recognition System, the agency shall pay the employee at that rate of basic pay within the rate range of the grade to which promoted that is equal to the rate of basic pay the employee would have been entitled to receive if the promotion had been to a General Schedule position in which he or she was not covered by the Performance Management and Recognition System.

(ii) When an employee is promoted from a position in one grade of the Performance Management and Recognition System to a position in a higher grade of the Performance Management and Recognition System, the agency shall pay the employee at the lowest whole-dollar rate of basic pay within the rate range of the grade to which promoted that exceeds the employee's existing rate of basic pay by an amount equal to six percent of that rate, or at the minimum rate of the higher grade, if that rate is higher.

(iii) When an employee is promoted from a position in one grade of the Performance Management and Recognition System to a position in a higher grade of the General Schedule in which he or she is not covered by the Performance Management and Recognition System, the agency shall pay the employee at the rate of basic pay for the lowest step of the grade to which promoted, for which the rate of basic pay exceeds the employee's existing rate of basic pay by an amount equal to six percent of that rate, or at the minimum rate of the higher grade, if that rate is higher.

(3) For the purpose of section 5334(b) of title 5, United States Code, an employee's "existing rate of basic pay" includes a special rate established under section 5303 of title 5, United States Code.

(b) *Classification decisions.* When a classification decision is made effective retroactively under Part 511 of this chapter, the agency shall treat the corrective personnel action affecting the employee concerned as a cancellation or correction, as the case may be, of the original action of demotion, and the employee is entitled to retroactive pay in accordance with the terms of the corrective action.

(c) *Pay adjustment on acquiring PMRS status.* Except as provided in paragraph (e) of this section, when an employee acquires PMRS status, the employee shall receive his or her existing rate of basic pay plus any of the following adjustments that may be applicable, in the order specified:

(1) The amount of any statutory adjustment in the General Schedule made on that date, or in the case of an employee subject to special pay rates,

the amount of any adjustment made on that date under section 5303 of title 5, United States Code, and Part 530 of this chapter;

(2) The amount of any within-grade or quality step increase to which the employee otherwise would be entitled on that date; and

(3) The amount resulting from a promotion effective on that date.

(d) *Pay adjustment on loss of PMRS status.* Except as provided in paragraph (e) of this section, when an employee loses PMRS status, the employee shall receive his or her existing rate of basic pay, plus any of the following adjustments that may be applicable, in the order specified:

(1) The amount of any general pay increase under section 5403 of title 5, United States Code, and § 540.106 of this chapter to which the employee otherwise would be entitled on that date, or in the case of an employee subject to special pay rates, the amount of any pay adjustment made on that date under section 5303 of title 5, United States Code, and Part 530 of this chapter;

(2) The amount of any merit increase under section 5404 of title 5, United States Code, and § 540.107 of this chapter to which the employee otherwise would be entitled on that date;

(3) The amount resulting from a promotion effective on that date;

(4) In the case of an employee whose resulting rate of basic pay falls between two steps of a General Schedule grade (or, in the case of an employee whose position is subject to special pay rates, between the two steps of the applicable special rate range), the amount of any increase that may be necessary to pay the employee the rate for the next higher step of that grade (or special rate range); and

(5) In the case of an employee whose resulting rate of basic pay falls below the minimum rate of a General Schedule grade (or, in the case of an employee whose position is subject to special pay rates, below the minimum of the applicable special rate range), the amount of any increase that may be necessary to pay the employee the minimum rate for that grade (or special rate range).

(e) *Special exceptions.* Paragraphs (c) and (d) (1) through (4) of this section do not apply to an employee who acquires or loses PMRS status as the result of—

(1) An action taken for disciplinary or performance related reasons, or

(2) The expiration or termination of a temporary promotion.

(5 U.S.C. 5334, 5402)

[45 FR 65498, Oct. 3, 1980, as amended at 47 FR 30229, July 13, 1982; 50 FR 11794, Mar. 25, 1985; 50 FR 35494, 35499, Aug. 30, 1985; 50 FR 40179, Oct. 1, 1985]

§ 531.205 Pay schedule conversion rules at the time of an annual pay adjustment under 5 U.S.C. 5305.

(a) On the effective date of a pay adjustment under 5 U.S.C. 5305, the rate of basic pay of an employee subject to the General Schedule shall be initially adjusted, except as provided in paragraph (b) of this section, as follows:

(1) If an employee is receiving basic pay immediately before the effective date of his pay adjustment at one of the rates of a grade in the General Schedule, he shall receive the rate of basic pay for the corresponding numerical rate of the grade in effect on and after such date.

(2) If an employee is receiving basic pay immediately before the effective date of his or her pay adjustment at a rate determined under chapter 54 of title 5, United States Code, and part 540 of this chapter, the employee shall have his or her rate of basic pay adjusted under section 5403 of that title and § 540.106 of this chapter.

(3) Except as provided in 5 U.S.C. 5363 and Part 536 of this chapter, if an employee is receiving basic pay immediately before the effective date of his or her pay adjustment at a rate in excess of the maximum rate of his or her grade, the employee shall receive his or her existing rate of basic pay increased by the amount of increase made by the pay adjustment under 5 U.S.C. 5305 in the maximum rate for the employee's grade.

(4) If an employee, immediately before the effective date of his pay adjustment, is receiving, pursuant to section 2(b)(4) of the Federal Employees Salary Increase Act of 1955, an exist-

ing aggregate rate of pay determined under section 208(b) of the Act of September 1, 1954 (68 Stat. 1111), plus subsequent increases authorized by law, he shall receive an aggregate rate of pay equal to the sum of his existing aggregate rate of pay on the day preceding the effective date of his adjustment, plus the amount of increase made by the pay adjustment under 5 U.S.C. 5305 in the maximum rate of his grade, until (i) he leaves his position, or (ii) he is entitled to receive aggregate pay at a higher rate by reason of the operation of any provision of law; but, when this position becomes vacant, the aggregate rate of pay of any subsequent appointee thereto shall be fixed in accordance with applicable provisions of law. Subject to paragraph (a)(4) (i) and (ii) of this section, the amount of the increase authorized by this section shall be held and considered for the purposes of section 208(b) of the Act of September 1, 1954, to constitute a part of the existing rate of pay of the employee.

(b) Rates of basic pay authorized under section 5303 of title 5, United States Code, paid to an employee subject to the General Schedule shall not be adjusted by reason of a pay adjustment under 5 U.S.C. 5305.

(5 U.S.C. 5305, 5402, E.O. 11721, as amended)

[45 FR 65498, Oct. 1980, as amended at 50 FR 35499, Aug. 30, 1985]

Subpart C—Pay Adjustments for Supervisors

SOURCE: 45 FR 65500, Oct. 3, 1980, unless otherwise noted.

§ 531.301 Authority of agency.

This subpart authorizes an agency to make a special adjustment in the pay of a supervisor in a General Schedule position who regularly has responsibility for supervision over one or more prevailing rate employees. In making this pay adjustment, an agency is governed by 5 U.S.C. 5333(b) and this subpart.

§ 531.302 Definitions.

In this subpart:

(a) "Prevailing rate employee" means an employee whose pay is fixed and adjusted from time to time by a wage board or similar administrative authority as nearly as is consistent with the public interest in accordance with prevailing rates or in accordance with prevailing rates and practices in the maritime industry.

(b) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

§ 531.303 Use of authority.

In determining whether to use the authority under section 5333(b) of title 5, United States Code, and this subpart, an agency shall consider (a) the relative rate-ranges of the supervisor and the prevailing rate employee supervised by him as well as the specific rate either is receiving at the time, and (b) the equities among supervisors in the same organizational entity as well as the equities between the supervisor and the prevailing rate employee supervised by him/her.

§ 531.304 Requirements for entitlement.

(a) *Basic.* Before an agency may adjust the pay of a supervisor under section 5333(b) of title 5, United States Code, and this subpart, it must find that (1) the supervisor regularly has responsibility for supervision (which must include supervision over the technical aspects of the work concerned) over one or more prevailing rate employees, and (2) the rate of basic pay for the supervisor is less than the rate of basic pay for the prevailing rate employee supervised by him/her.

(b) *Regular responsibility.* A supervisor regularly has responsibility for supervision when this responsibility is a continuing assignment as reflected in his/her official position description.

(c) *Responsibility for supervision.* A supervisor has responsibility for supervision (including supervision over the technical aspects of the work concerned) when he/she has relatively frequent personal contact with the prevailing rate employees in the unit in connection with assigned work and when he/she personally or through an intermediate prevailing rate supervisor.

(1) Determines assignments or duties for individual prevailing rate employees;

(2) Makes reviews of work products of individual prevailing rate employees when the reviews require a substantial subject matter or technical knowledge;

(3) Plans and organizes work with primary emphasis on distribution of assignments, workloads of individual prevailing rate employees, work item priorities, and schedules for timely completion of work items, projects or cases;

(4) Provides advise, assistance, counsel, or instructions to individual prevailing rate employees;

(5) Evaluates the performance of individual prevailing rate employees; and

(6) Serves as the focal point for discussion of problems arising from, or associated with, specific work products of the unit.

(d) *Rate of basic pay.* (1) In comparing the rate of basic pay for a supervisor with the rate of basic pay for a prevailing rate employee supervised by him/her, an agency shall exclude from the prevailing rate employee's rate (i) any irregular prevailing rate, such as a retained rate not related to his/her current position, and (ii) night and environmental differentials.

(2) When an agency excludes an irregular prevailing rate for the prevailing rate employee from comparison, the agency shall consider the highest rate of the regular prevailing rate for the position occupied by the prevailing rate employee.

§ 531.305 Adjustment of rates.

(a) *Rate payable to supervisor.* (1) Except as provided in paragraph (a)(2) of this section, when an agency decides to adjust the rate of pay for a supervisor under 5 U.S.C. 5333(b) and this subpart, it shall adjust his or her rate of pay as follows:

(i) A supervisor who occupies a position not covered by the Performance Management and Recognition System shall have his or her rate of pay adjusted to the nearest rate, but not above the maximum rate, of his or her grade which exceeds the highest rate of basic pay, excluding night and environmental differentials, paid to any prevailing rate employee for whom the supervisor regularly has responsibility for supervision.

(ii) A supervisor who occupies a position covered by the Performance Management and Recognition System shall have his or her rate of pay adjusted to any dollar amount of the appropriate grade which exceeds the highest rate of basic pay, excluding night and environmental differentials, paid to any prevailing rate employee for whom the supervisor regularly has responsibility for supervision. However, the adjusted rate shall not exceed the rate of basic pay of the prevailing rate employee by more than 3 percent and shall not exceed the maximum rate of basic pay of the supervisor's grade.

(2) When a supervisor is in an area in which he/she receives a cost-of-living allowance or post differential based on hardship, and the prevailing rate employee he/she supervises does not receive a separately stated cost-of-living allowance or post differential, the agency shall add to the supervisor's rate of basic pay his/her cost-of-living allowance or post differential and use the total to adjust his/her rate of pay under paragraph (a)(1) of this section.

(b) *Documentation.* The agency shall record the basis for the determination of the supervisor's adjusted rate in his/her Official Personnel Folder.

(c) *Effective date.* The adjustment of a supervisor's rate of pay under this subpart is effective on the first day of the first pay period following the date on which the agency determines to make the adjustment under section 5333(b) of title 5, United States Code, and this subpart.

(d) *Equivalent increase.* An adjustment in pay under section 5333(b) of title 5, United States Code, and this subpart is an equivalent increase in pay under section 5335 of title 5, United States Code.

(5 U.S.C. 5333; E.O. 11721, as amended)

[45 FR 65500, Oct. 3, 1980, as amended at 50 FR 35499, Aug. 30, 1985]

Subpart D—Within-Grade Increases

AUTHORITY: 5 U.S.C. 5301, 5335, and 5338 and E.O. 11721 as amended, section 402, unless otherwise noted.

SOURCE: 46 FR 2319, Jan. 9, 1981, unless otherwise noted.

§ 531.401 Principal authorities.

The following are the principal authorities for the regulations in this subpart:

(a) 5 U.S.C. 2301(b)(3) provides in part that "* * * appropriate incentives and recognition should be provided for excellence in performance."

(b) 5 U.S.C. 5301(a)(2) provides that "pay distinctions be maintained in keeping with work and performance distinctions."

(c) Section 402 of E.O. 11721, as amended, provides that "The Civil Service Commission [Office of Personnel Management] shall issue such regulations and standards as may be necessary to ensure that only those employees whose work is of an acceptable level of competence receive periodic step-increases under the provisions of section 5335 of title 5, United States Code."

[48 FR 49485, Oct. 25, 1983]

§ 531.402 Employee coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees who occupy permanent positions classified and paid under the General Schedule and who are paid at less than the maximum step of their grades.

(b) This subpart does not apply to:

(1) Employees who are covered by the Performance Management and Recognition System established under chapter 54 of title 5, United States Code;

(2) Members of the Senior Executive Service established under subchapter II of chapter 31 of title 5, United States Code;

(3) Individuals appointed by the President, by and with the advice and consent of the Senate; and

(4) Employees of the government of the District of Columbia.

[46 FR 2319, Jan. 9, 1981, as amended at 50 FR 35499, Aug. 30, 1985]

§ 531.403 Definitions.

In this subpart:

"Acceptable level of competence" means fully successful performance by an employee of the duties and responsibilities of his or her assigned position which warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position, subject to the requirements of § 531.404 of this subpart.

"Agency" means an agency defined in section 5102 of title 5, United States Code.

"Calendar week" means a period of any seven consecutive calendar days.

"Critical Element" has the meaning given that term in 430.203 of this chapter.

"Employee" means an employee of an agency.

"Equivalent increase" means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the rate of pay for the General Schedule grade and step occupied by the employee and the rate of pay for the next higher step of that grade.

"Permanent position" means a position filled by an employee whose appointment is not designated as temporary by law and does not have a definite time limitation of one year or less. "Permanent position" includes a position to which an employee is promoted on a temporary or term basis for at least one year.

"Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

"Scheduled tour of duty" means any work schedule established for an employee in accordance with the regular procedures for the establishment of workweeks in § 610.111 of this chapter. For a full-time employee this includes the basic 40-hour workweek. For a part-time employee this is any regularly scheduled work of less than 40-hours during the administrative workweek.

"Waiting period" means the minimum time requirement of creditable service to become eligible for consideration for a within-grade increase.

"Within-grade increase" means a periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade in accordance with section 5335 of title 5, United States Code, and this subpart. The term "within-grade increase" is synonymous with the term "step-increase" used in section 5335 of title 5, United States Code.

[46 FR 2319, Jan. 9, 1981, as amended at 46 FR 41019, Aug. 14, 1981; 48 FR 49486, Oct. 25, 1983]

§ 531.404 Earning within-grade increase.

An employee paid at less than step 10 of the grade of his or her position shall only earn advancement in pay to the next higher step of that grade upon meeting the three requirements established by law:

(a) To earn a within-grade increase, the employee's performance of assigned work must be at an acceptable level of competence, as defined in this subpart by authority of Section 402 of E.O. 11721, as amended. Acceptable level of competence means a level of performance of assigned work of at least "Fully Successful", as defined in Part 430 of this chapter, for each critical element. In addition, the employee's most recent summary performance rating, as defined in the agency Performance Management Plan, must be at least "Fully Successful".

(b) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position; and

(c) The employee must not have received an equivalent increase during the waiting period.

[48 FR 49486, Oct. 25, 1983]

§ 531.405 Waiting periods for within-grade increase.

(a) Length of waiting period. (1) For an employee with a scheduled tour of duty the waiting periods for advancement to the following steps in all General Schedule grades are:

(i) Steps 2, 3, and 4—52 calendar weeks of creditable service;

(ii) Steps 5, 6 and 7—104 calendar weeks of creditable service; and

(iii) Steps 8, 9, and 10—156 calendar weeks of creditable service.

(2) For an employee without a scheduled tour of duty, the waiting periods for advancement to the following steps in all General Schedule grades are:

(i) Steps 2, 3 and 4—260 days of creditable service in a pay status over a period of not less than 52 calendar weeks;

(ii) Steps 5, 6 and 7—520 days of creditable service in a pay status over a period of not less than 104 calendar weeks; and

(iii) Steps 8, 9, and 10—780 days of creditable service in a pay status over a period of not less than 156 calendar weeks.

(b) Commencement of a waiting period. A waiting period begins;

(1) On the first appointment as an employee of the Federal Government, regardless of tenure;

(2) On receiving an equivalent increase; or

(3) After a period of nonpay status or a break in service (alone or in combination) in excess of 52 calendar weeks, unless the nonpay status or break in service is creditable service under § 531.406 of this subpart.

(c) A waiting period is not interrupted by non-workdays intervening between an employee's last scheduled workday in one position and his or her first scheduled workday in a new position.

§ 531.406 Creditable service.

(a) *General.* Civilian employment in any branch of the Federal Government (executive, legislative, or judicial) or with a Government corporation as defined in section 103 of title 5, United States Code, is creditable service in the computation of a waiting period. Service credit is given during this employment for periods of annual, sick, and other leave with pay; advanced annual and sick leave; and service under a temporary or term appointment. Depending on the specific provision of law or regulation, service may be creditable for the completion of one waiting period or for the completion of successive waiting periods. Paragraph (b) of this section identifies service which is creditable in the computation of a single waiting period. Paragraph (c) identifies service which is creditable in the computation of successive waiting periods.

(b) *Service creditable for one within-grade increase.* (1) Military service as defined in section 8331(13) of title 5, United States Code, is creditable service in the computation of a waiting period when an employee is reemployed with the Federal Government not later than 52 calendar weeks after separation from such service or hospitalization continuing thereafter for a period of not more than one year.

(2) Time in a nonpay status is creditable service in the computation of a waiting period for an employee with a scheduled tour of duty when it does not exceed an aggregate of:

(i) Two workweeks in the waiting period for steps 2, 3, and 4;

(ii) Four workweeks in the waiting period for steps 5, 6, and 7; and

(iii) Six workweeks in the waiting period for steps 8, 9, and 10.

Except as provided in paragraph (c) of this section, time in a nonpay status in excess of the allowable amount shall extend a waiting period by the excess amount.

(c) *Service creditable for succesive within-grade increases.*

(1) A leave of absence from a position in which an employee is covered by this subpart, whether the employee is on leave without pay or is considered to be on furlough, is creditable service in the computation of waiting periods for successive within-grade increases when:

(i) The employee is absent for the purpose of engaging in military service as defined in section 8331(13) of title 5, United States Code, and returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation;

(ii) The employee is receiving injury compensation under subchapter I of chapter 81 of title 5, United States Code;

(iii) The employee is performing service that is creditable under section 8332(b) (5) or (7) of title 5, United States Code;

(iv) The employee is temporarily employed by another agency in a position covered by this subpart; or

(v) The employee is assigned to a State or local government or institution of higher education under sections 3371-3376 of title 5, United States Code.

(2) The period from the date of an employee's separation from Federal service with a restoration or reemployment right granted by law, Executive order, or regulation to the date of restoration or reemployment with the Federal Government through the exercise of that right is creditable service in the computation of waiting periods for successive within-grade increases.

(3) The period during which a separated employee is in receipt of injury compensation under subchapter I of chapter 81 of title 5, United States Code, as a result of an injury incurred by the employee in the performance of duty is creditable service in the computation of waiting periods for successive within-grade increases when the employee is reemployed with the Federal Government.

[46 FR 2319, Jan. 9, 1981, as amended at 46 FR 41019, Aug. 14, 1981; 46 FR 43371, Aug. 28, 1981; 46 FR 45747, Sept. 15, 1981]

§ 531.407 Equivalent increase determinations.

(a) *Multiple increases.* When an employee receives more than one increase in his or her rate of basic pay during a waiting period, no one of which is an equivalent increase, the first and subsequent increases during the waiting period shall be added together until they amount to an equivalent increase, at which time the employee shall be deemed to have received an equivalent increase.

(b) *Position change.* When an employee changes positions without receiving an equivalent increase, or when an individual not covered by this subpart moves to a position in which he or she is covered by this subpart without receiving an equivalent increase, he or she shall be deemed to have received his or her last equivalent increase—

(1) At the time of the last equivalent increase in the prior position; or

(2) At the time he or she was deemed to have received an equivalent increase in the prior position under paragraph (a) of this section, if that is later.

(c) *Increases in pay not considered equivalent increases.* An increase in an employee's rate of basic pay shall not be considered an equivalent increase when it results from the following:

(1) A statutory pay adjustment, including a general pay increase made under section 5403 of title 5, United States Code, but not including a merit increase made under section 5404 of that title;

(2) The periodic adjustment of a wage schedule or the application of a new pay or evaluation plan under the Federal Wage System;

(3) The establishment of higher minimum rates under section 5303 of title 5, United States Code, or an increase in such rates;

(4) A quality step increase under section 5336 of title 5, United States Code, and Subpart E of this part;

(5) A temporary or term promotion when returned to the permanent grade and step; and

(6) An increase resulting from placement of an employee in a supervisory or managerial position who does not satisfactorily complete a probationary period established under section 3321(a)(2) of title 5, United States Code, and is returned to a position at the same grade and step held by the employee before such placement.

(d) *Merit increases.* For the purpose of applying section 5335 of title 5, United States Code, and this subpart, all or a portion of, or a zero merit increase, made under section 5404 of title 5, United States Code, and § 540.107 of this chapter is an equivalent increase.

[46 FR 2319, Jan. 9, 1981, as amended at 50 FR 35499, Aug. 30, 1985]

§ 531.408 Communication of performance requirements.

(a) The head of the agency or other designated agency official shall determine the specific requirements for performance at an acceptable level of competence.

(b) Employees covered by an appraisal system established under § 430.204 of this chapter shall be informed of the specific performance requirements that constitute an acceptable level of competence within the time frame and by the means of communication of performance standards established under § 430.204 of this chapter.

(c) Employees not covered by an appraisal system established under § 430.204 of this chapter shall be informed, under procedures established by the head of the agency, of the specific requirements for performance at an acceptable level of competence within a reasonable time after initial appointment or permanent change in position.

[46 FR 2319, Jan. 9, 1981, as amended at 48 FR 49486, Oct. 25, 1983]

§ 531.409 Acceptable level of competence determinations.

(a) *Responsibility.* The head of the agency or other agency official to whom such authority is delegated shall determine which employees are performing at an acceptable level of competence.

(b) *Basis for determination.* When applicable, an acceptable level of competence determination shall be based on a current performance rating made under Part 430 of this chapter. For those agencies not covered by 5 U.S.C. 43 and for employees in positions excluded from subchapter I of 5 U.S.C. 43, an acceptable level of competence determination shall be based on minimal performance appraisal requirements issued by OPM. If an employee has been reduced in grade due to "Unacceptable" performance and has served in one position at the lower grade for at least the minimum appraisal period established by the agency, a performance rating at the lower grade shall be used as the basis for an acceptable level of competence determination.

(c) *Delay in determination.* An acceptable level of competence determination must be delayed when both of the following apply:

(1) An employee has not had the minimum period of time established by the agency to demonstrate acceptable performance because he or she has

not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position; and

(2) The employee has not been given a performance rating in any position within 90 days before the end of the waiting period. When an acceptable level of competence determination has been delayed under this subpart, the employee shall be informed that his or her determination is postponed and of the specific requirements for performance at an acceptable level of competence. The determination shall be based on a performance rating completed at the end of the minimum appraisal period established by the agency performance appraisal plan.

(d) *Waiver of requirement for determination.* An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum appraisal period under an applicable agency performance appraisal system during the final 52 calendar weeks of the waiting period for one or more of the following reasons:

(1) Absences that are creditable service in the computation of a waiting period or periods under § 531.406 of this subpart;

(2) Because of paid leave;

(3) Because the employee received service credit under the back pay provisions of subpart H of Part 550 of this chapter;

(4) Because of details to another agency or employer; or

(5) Because of long term training.

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum appraisal period under the applicable agency performance appraisal system.

(e) *Notice of determination.* (1) A level of competence determination shall be communicated to an employee in writing as soon as possible after completion of the waiting period or other period upon which it was based.

(2) When the head of an agency or his or her designee determines that an employee's performance is not at an acceptable level of competence, the negative determination shall be communicated to the employee in writing and shall:

(i) Set forth the reasons for the negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under § 531.411 of this subpart.

(ii) Inform the employee of his or her right to request that the appropriately designated agency official reconsider the determination.

[46 FR 2319, Jan. 9, 1981, as amended at 48 FR 49486, Oct. 25, 1983]

§ 531.410 Reconsideration of a negative determination.

(a) When an agency head, or his or her designee, issues a negative determination the following procedures are established in accordance with section 5335(c) of title 5, United States Code for reconsideration of the negative determination:

(1) An employee or an employee's personal representative may request reconsideration of a negative determination by filing, not more than 15 days after receiving notice of determination, a written response to the negative determination setting forth the reasons the agency shall reconsider the determination;

(2) When an employee files a request for reconsideration, the agency shall establish an employee reconsideration file which shall contain all pertinent documents relating to the negative determination and the request for reconsideration, including copies of the following:

(i) the written negative determination and the basis therefore;

(ii) the employee's written request for reconsideration;

(iii) the report of investigation when an investigation is made;

(iv) the written summary or transcript of any personal presentation made; and

(v) the agency's decision on the request for reconsideration.

The file shall not contain any document that has not been made available to the employee or his or her personal representative with an opportunity to submit a written exception to any summary of the employee's personal presentation;

(3) An employee in a duty status shall be granted a reasonable amount of official time to review the material relied upon to support the negative determination and to prepare a response to the determination; and

(4) The agency shall provide the employee with a prompt written final decision.

(b) The time limit to request a reconsideration may be extended when the employee shows he or she was not notified of the time limit and was not otherwise aware of it, or that the employee was prevented by circumstances beyond his or her control from requesting reconsideration within the time limit.

(c) An agency may disallow as an employee's personal representative an individual whose activities as a representative would cause a conflict of interest of position, an employee whose release from his or her official duties and responsibilities would give rise to unreasonable costs to the Government, or an employee whose priority work assignment precludes his or her release from official duties and responsibilities. Section 7114 of title 5, United States Code, and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(d) When a negative determination is sustained after reconsideration, an employee shall be informed in writing of the reasons for the decision and of his or her right to appeal the decision to the Merit Systems Protection Board. However, for an employee covered by a collective bargaining agreement a reconsideration decision that sustains a negative determination is only reviewable in accordance with the terms of the agreement.

[46 FR 2319, Jan. 9, 1981, as amended at 50 FR 45389, Oct. 31, 1985]

§ 531.411 Continuing evaluation after withholding a within-grade increase.

When a within-grade increase has been withheld, an agency may, at any time thereafter, rate the employee and grant the within-grade increase when it determines that he or she has demonstrated sustained performance at an acceptable level of competence. However, the agency shall determine whether the employee's performance is at an acceptable level of competence after no more than 52 calendar weeks following the original eligibility date for the within-grade increase and, for as long as the within-grade increase continues to be denied, determinations will be made after no longer than each 52 calender weeks.

[48 FR 49486, Oct. 25, 1983]

§ 531.412 Effective date of a within-grade increase.

(a) Except as provided in paragraph (b) of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility.

(b) When an acceptable level of competence is achieved at some time after a negative determination, the effective date is the first day of the first pay period after the acceptable determination has been made.

[46 FR 2319, Jan. 9, 1981, as amended at 46 FR 41020, Aug. 14, 1981]

§ 531.413 Reports and evaluation of within-grade increase authority.

(a) *Reports.* The Office of Personnel Management may require agencies to maintain records and report on the use of the authority to grant or withhold within-grade increases.

(b) *Evaluation.* The Office of Personnel Management may evaluate an agency's use of the authority to grant or withhold within-grade increases. An agency shall take any corrective action required by the Office.

Subpart E—Quality Step Increases

AUTHORITY: 5 U.S.C. 5335 and 5338, E.O. 11721, as amended , § 402.

SOURCE: 46 FR 2322, Jan. 9, 1981, unless otherwise noted.

§ 531.501 Applicability.

This subpart contains regulations of the Office of Personnel Management to carry out section 5336 of title 5, United States Code, which authorizes the head of an agency, or another official to whom such authority is delegated, to grant quality step increases, and to carry out section 403 of Executive Order 11721, as amended, which requires the Office to issue regulations and assist agencies in establishing plans for the administration of this section of law.

§ 531.502 Definitions.

"Agency" means an agency defined in section 5102 of title 5, United States Code.

"Employee" means an employee of an agency.

"Quality step increase" means an increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of the grade in accordance with section 5336 of title 5, United States Code, and this subpart. The term "quality step increase" is synonymous with the term "step increase" used in section 5336 of title 5, United States Code.

[46 FR 2322, Jan. 9, 1981, as amended at 46 FR 41020, Aug. 14, 1981]

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to recognize outstanding performance by granting faster than normal step increases.

[48 FR 49487, Oct. 25, 1983]

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to an employee who receives a summary performance rating of "Outstanding", as defined in Part 430 of this chapter.

[48 FR 49487, Oct. 25, 1983]

§ 531.505 Restrictions on granting quality step increases.

As provided by 5 U.S.C. 5336, a quality step increase may not be granted to an employee who has received a quality step increase within the preceding 52 consecutive calendar weeks.

[48 FR 49487, Oct. 25, 1983]

§ 531.506 Effective date of quality step increase.

Quality step increases shall be effective as soon as possible after annual performance appraisals are approved.

[48 FR 49487, Oct. 25, 1983]

§ 531.507 Agency plans for granting quality step increases.

Each agency shall include a plan for granting quality step increases, as required by § 430.207(a)(4) of this chapter, in the agency's Performance Management Plan. The plan shall:

(a) Be as simple as practicable;

(b) Provide for delegation of authority to grant quality step increases to the lowest practicable level of management;

(c) Be reviewed and approved in accordance with § 430.207 of this chapter; and

(d) Provide for informing employees, at least annually, of the number of quality step increases granted in the agency by grade level.

[48 FR 49487, Oct. 25, 1983]

§ 531.508 Reports and evaluation of quality step increase authority.

(a) *Reports.* The Office of Personnel Management shall require agencies to maintain records and report, in accordance with established procedures, on the use of the authority to grant quality step increases.

(b) *Evaluation.* The Office of Personnel Management may evaluate an agency's use of the authority to grant quality step increases. The agency shall take any corrective action required by the Office.

(5 U.S.C. 5336 and 5338; E.O. 11721, as amended, sec. 403)

[46 FR 2322, Jan. 9, 1981, as amended at 46 FR 41020, Aug. 14, 1981. Redesignated at 48 FR 49487, Oct. 25, 1983]

Subpart F—Performance Awards

AUTHORITY: 5 U.S.C. 4302(a)(3), 4506, and 5405.

Source: 48 FR 49487, Oct. 25, 1983, unless otherwise noted.

§ 531.601 Applicability.

(a) This subpart contains the Office of Personnel Management's regulatory requirements for establishment and conduct of the performance awards component of the Performance Management System, under the authority of title 5, United States Code, Chapters 43, 45, and 54.

(b) An award under this subpart shall be supported by the employee's performance rating and based on accomplishments and contributions which are within the scope of the employee's assigned job responsibilities and performance standards.

(c) One-time special acts or services rewarded under this subpart shall be within the scope of job responsibilities and performance standards.

(d) Refer to Part 451 of this chapter for the regulatory requirements for granting awards to employees for suggestions, inventions, and meritorious actions.

§ 531.602 Purpose of performance awards.

(a) The purpose of performance awards is to motivate employees, and recognize and reward those who attain high levels of performance.

(b) The Office of Personnel Management encourages agencies to make maximum use of their authorities under Chapters 43, 45, and 54 of title 5, United States Code, to establish and administer performance awards that best support and enhance agency and national goals and meet employee recognition needs.

§ 531.603 Coverage.

(a) This subpart applies to employees as defined by Section 2105, title 5, United States Code, including those covered by the Merit Pay System established under Chapter 54 of title 5, United States Code, but does not include employees in the Senior Executive Service.

(b) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 531.604 Definitions.

In this subpart, terms are defined as follows:

"Honorary award" means a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

"Monetary award" means a cash award which is not part of an employee's basic rate of pay.

"Non-monetary award" means an award tailored to meet special conditions and needs of an employee and/or an organization. It usually has a monetary connotation for the agency but not for the employee.

"Performance award" or *"award"* means a monetary, honorary, or non-monetary award.

"Plan" means a written statement submitted by the head of the agency and approved by OPM, implementing law and regulation for performance awards with specific attention to the monetary component of the overall Performance Management Plan as described in § 430.207 of this chapter.

§ 531.605 Policy.

(a) The policy of the Performance Awards Program shall be to:

(1) Grant recognition in keeping with the value of the contribution to the Federal Government;

(2) Consider employee contributions for application throughout the Federal Government; and

(3) Assure that awards are not used as a substitute for other personnel actions, or as a substitute for pay.

(b) A performance award under this subpart shall be:

(1) Monetary, honorary, or non-monetary;

(2) Based on employee accomplishments and contributions which are within the scope of an employee's assigned job responsibilities and performance standards; and

(3) Based on a percentage of the employee's base pay, up to a maximum of 20 percent. However, if the sum of the performance award recommended and any within-grade and/or quality step increase received by the employee during the previous 12 months exceeds 20 percent, the award shall be reduced to that maximum.

§ 531.606 Eligibility.

(a) A performance award may be granted to an employee when performance accomplishments or other contributions:

(1) Are within the scope of his or her assigned job responsibilities and performance standards;

(2) Benefit the Government as described in 5 U.S.C. 4503 and 4504;

(3) Were made while the contributor was a Government employee;

(4) Have been supported by a performance rating of at least "Exceeds Fully Successful" on one or more elements of a job or a summary performance rating of at least "Exceeds Fully Successful"; and

(5) Have been approved at a management level higher than the official who recommended the performance award.

(b) Performance awards shall not be mandatory except as required by §§ 430.204(t), 431.204(w) and 540.110(a)(3) of this chapter.

§ 531.607 Payment.

Awards paid under this subpart do not increase the rate of basic pay and are subject to the withholding of income taxes.

§ 531.608 Responsibilities of the Office of Personnel Management.

(a) OPM shall provide guidance to agencies on how the performance awards component of the Performance Management System should be carried out.

(b) OPM shall review and approve the agency performance award component of the Performance Management Plan, and any proposed plan revisions which have an impact on how an agency meets statutory and regulatory requirements.

§ 531.609 Agency responsibilities.

(a) The head of each agency shall establish all performance awards as a component of the Performance Management Plan. The plan must provide for:

(1) Documentation in the employee's Official Personnel Folder to reflect the nature of a performance award, including the amount of a monetary award; and

(2) Due weight to a performance award when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362.

(b) The head of each agency shall transmit to OPM:

(1) All award recommendations over $10,000;

(2) A Performance Management Plan which includes a performance awards component, and proposed plan revisions for review and approval, as required by § 430.207(a) of this chapter; and

(3) An annual report on performance awards activities for the past fiscal year.

(c) The performance awards component of the Performance Management Plan to be submitted to OPM shall include the following provisions:

(1) Use of the agency's performance rating under Part 430 of this chapter as the basis for granting monetary, honorary, and non-monetary performance awards;

(2) Delegation of authority and responsibility for approval of monetary, honorary and non-monetary performance awards to the appropriate management level;

(3) Performance award recommendations to involve the minimum amount of paperwork and processing which show that criteria are met and that expenditure of appropriated funds for the award is justified;

(4) Granting of performance awards as soon as possible after performance ratings are approved, or as soon as possible after an assessment of performance indicates that an award should be granted;

(5) A plan for incorporating performance awards into the merit pay determination process, as required by § 540.110(a)(3) of this chapter; and

(6) A plan for determining the performance award fund, including previous years' and projected expenditures, as required by § 430.207(a)(4) of this chapter. Funds for any agency Productivity Benefit Sharing Program shall not be included in the performance award fund, inasmuch as these are separate from performance awards.

PART 532—PREVAILING RATE SYSTEMS

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AUTHORITY: 5 U.S.C. 5343, 5346.

SOURCE: 46 FR 21344, Apr. 10, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 532.101 Scope.

This part provides common policies, systems, and practices for uniform application by all agencies subject to section 5342 of title 5, United States Code, in fixing pay for prevailing rate employees as nearly as is consistent with the public interest in accordance with prevailing rates.

§ 532.103 Coverage.

The provisions of this part shall apply to prevailing rate employees and agencies covered by section 5342 of title 5, United States Code.

§ 532.105 *Pay-fixing* authority.

The head of each agency shall authorize application of the rates established by the lead agency or the Office of Personnel Management (OPM) to prevailing rate employees within the appropriate wage area, in accordance with the provisions of this part.

Subpart B—Prevailing Rate Determinations

§ 532.201 Definitions.

For the purposes of this part:

"Full-scale survey" means a survey conducted at least every 2 years in which data are collected from a current sampling of establishments in the private sector by personal visit of data collectors.

"Host activity" is the local Federal activity designated by the lead agency to obtain employment statistics from other Federal activities in the wage area and to provide support facilities and clerical assistance for the wage survey.

"Lead agency" means the agency designated by the Office of Personnel Management to plan and conduct wage surveys, analyze wage survey data, and determine and issue required wage schedules for a wage area.

"Survey area" means that part of the wage area where the private enterprise establishments included in the wage survey are located.

"Wage area" means that geographic area within which a single set of regular wage schedules is applied uniformly by Federal installations to covered occupations.

"Wage change survey" means a survey in which rate change data are collected from the same establishments and for the same establishment occupations represented in the full-scale survey. These data may be collected by telephone, mail, or personal visit.

§ 532.203 Structure of regular wage schedules.

(a) Each nonsupervisory and leader regular wage schedule shall have 15 grades, which shall be designated as follows:

(1) "WG" means an appropriated fund nonsupervisory grade;

(2) "WL" means an appropriated fund leader grade;

(3) "NA" means a nonappropriated fund nonsupervisory grade; and

(4) "NL" means a nonappropriated fund leader grade.

(b) Each supervisory regular wage schedule shall have 19 grades, which shall be designated as follows:

(1) "WS" means an appropriated fund supervisory grade; and

(2) "NS" means a nonappropriated fund supervisory grade.

(c) The step 2 or payline rate for each grade of a leader regular wage schedule shall be equal to 110 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area.

(d) The step 2 or payline rate for each grade of an appropriated fund supervisory regular wage schedule shall be:

(1) For grades WS-1 through WS-10, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area, plus 30 percent of the rate for step 2 of WG-10;

(2) For grades WS-11 through WS-19, based on a parabolic curve linking the WS-10 rate to the WS-19 rate, which latter rate is equal to the third rate in effect for General Schedule grade GS-14 at the time of the area wage schedule adjustment.

(e) The step 2 or payline rate for each grade of a nonappropriated fund supervisory regular wage schedule shall be:

(1) For grades NS-1 through NS-8, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area, plus 20 percent of the rate for step 2 of NA-8;

(2) For grades NS-9 through NS-15, equal to 120 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area;

(3) For grades NS-16 through NS-19, the rates will be 25, 30, 35 and 40 percent, respectively, above the step 2 rate of NA-15;

(f) The number of within-grade steps and the differentials between steps for each nonsupervisory grade on a regular wage schedule shall be established in accordance with 5 U.S.C. 5343(e)(1). Each grade on a leader and supervisory regular wage schedule shall have 5 within-grade steps with step 2 set according to paragraphs (c), (d), or (e) of this section, as appropriate, and—

(1) Step 1 set at 96 percent of the step 2 rate;

(2) Step 3 set at 104 percent of the step 2 rate;

(3) Step 4 set at 108 percent of the step 2 rate; and

(4) Step 5 set at 112 percent of the step 2 rate.

[46 FR 21344, Apr. 10, 1981, as amended at 48 FR 13385, Mar. 30, 1983; 49 FR 28347, July 11, 1984]

§ 532.205 The use of Federal, State, and local minimum wage requirements in determining prevailing rates.

(a) Wage schedules, including special schedules, shall not include any rates of pay less than the higher of:

(1) The minimum rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, or

(2) The highest State or local minimum wage rate in the local wage area which is applicable to the private industry counterparts of the single largest Federal industry/occupation in the wage area.

(b) Wage data below the minimum wage rates prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, shall not be used in determining prevailing rates.

(c) Adjustments to regular wage schedules to comply with the minimum wage rate determined to be applicable under paragraph (a) of this section shall be computed as follows:

(1) The step 2 rate of grade 1 of the nonsupervisory wage schedule shall be set at a rate which, upon application of the 4 percent step-rate differential, provides a step 1 rate which is equal to the applicable minimum wage rate.

(2) An intergrade differential shall be determined as 5 percent of the rate established as the step 2 rate of grade 1, rounded to the nearest whole cent. This intergrade differential shall be added to the step 2 rate of each grade, beginning with grade 1, to determine the step 2 rate for the succeeding grade until the grade is reached at which the step 2 rate established through the wage survey process equals or exceeds the rate determined under this procedure. Rates of all grades above that point shall be computed in accordance with § 532.221(b) of this subpart.

(3) Steps 1, 3, 4, and 5 of each grade adjusted under paragraph (c) of this section shall be set at 96, 104, 108, and 112 percent of the step 2 rate, respectively.

(4) The leader and supervisory wage schedule grades corresponding to each nonsupervisory grade adjusted under paragraph (c) of this section shall be constructed in accordance with the procedures of § 532.203 of this subpart, on the basis of the step 2 rates established under this paragraph for the nonsupervisory wage schedule grades.

(d) All wage schedule adjustments made under this section shall be effective on the effective date of the applicable minimum wage rate.

§ 532.207 Agency wage committee.

(a) Each lead agency shall establish an agency wage committee for the purpose of considering matters relating to the conduct of wage surveys, the establishment of wage schedules and making recommendations thereon to the lead agency.

(b) The Agency Wage Committee shall consist of five members, with the chairperson and two members designated by the head of the lead agency, and the remaining two members designated as follows:

(1) For the Department of Defense Wage Committee, one member shall be designated by each of the two labor organizations having the largest number of wage employees covered by exclusive recognition in the Department of Defense; and

(2) For other lead agencies, two members shall be designated by the labor organization having the largest number of wage employees by exclusive recognition in the agency.

(c) Recommendations of agency wage committees shall be developed by majority vote. Any member of an agency wage committee may submit a minority report to the lead agency along with the recommendations of the committee.

§ 532.209 Local wage survey committee.

(a)(1) A lead agency shall establish a local wage survey committee in each wage area for which it has lead agency responsibility and in which a labor organization represents, by exclusive recognition, wage employees subject to the wage schedules for which the survey is conducted.

(2) The local wage survey committee shall assist the lead agency in the conduct of wage surveys and make recommendations to the lead agency thereon.

(b)(1) Local wage survey committees shall consist of three members, with the chairperson and one member designated by the lead agency, and one member recommended by the labor organization having the largest number of wage employees under the regular wage schedule who are under exclusive recognition in the wage area.

(2) All members of local wage survey committees for appropriated fund surveys shall be Federal employees appointed by their employing agencies.

(3) Members for nonappropriated fund surveys shall be nonappropriated fund employees appointed by their employing agencies.

(4) The member recommended by the labor organization must be an employee of a Federal activity for appropriated fund surveys or nonappropriated fund activity for nonappropriated fund surveys who is covered by one of the regular wage schedules in the wage area in which the activity is located.

(c) A local wage survey committee shall be established before each full-scale wage survey. Responsibility for providing members shall remain with the same agency and the same labor organization until the next full-scale survey.

(d) Recommendations of local wage survey committees shall be developed by majority vote. Any member of a local wage survey committee may submit a minority report to the lead agency along with the recommendations of the committee.

(e) The lead agency shall establish the type of local wage survey organization it considers appropriate in a wage area which does not qualify for a local wage survey committee under paragraph (a) of this section.

§ 532.211 Responsibilities of participating organizations.

(a) The Office of Personnel Management:

(1) Defines the boundaries of wage and survey areas;

(2) Prescribes the required industries to be surveyed;

(3) Prescribes the required job coverage for surveys;

(4) Designates a lead agency for each wage area;

(5) Establishes, jointly with lead agencies, a nationwide schedule of wage surveys;

(6) Arranges for technical services with other Government agencies;

(7) Considers recommendations of the national headquarters of any agency or labor organization relating to the Office of Personnel Management's responsibilities for the Federal Wage System; and

(8) Establishes wage schedules and rates for prevailing rate employees who are United States citizens outside of the United States, District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the Territories and Possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) Federal Prevailing Rate Advisory Committee. This committee functions in accordance with the requirements set forth under section 5347 of title 5, United States Code.

(c) Employing agencies.

(1) Heads of agencies. The head of an agency is responsible, within the policies and procedures of the Federal Wage System, for authorizing application of wage schedules developed by a lead agency and fixing and administering rates of pay for wage employees of his/her organization.

(2) Heads of local activities. The head of each activity in a wage area is responsible for providing employment information, wage survey committee members, data collectors, and any other assistance requested by the local wage survey committee.

(d) Lead agencies. In accordance with the practices and procedures prescribed by the Office of Personnel Management, each agency assigned lead agency responsibility for a designated wage area is responsible for:

(1) Planning and conducting the wage survey for that area;

(2) Developing survey specifications and providing or arranging for the identification of establishments to be surveyed;

(3) Officially ordering wage surveys;

(4) Establishing wage schedules, applying wage schedules authorized by the head of the agency; and

(5) Referring pertinent matters to the agency wage committee and the Office of Personnel Management.

(e) Agency wage committees. As appropriate, agency wage committees consider and make recommendations to the lead agency on wage schedules and any matters involving survey specifications for full-scale surveys if the lead agency chooses not to accept recommendations of the local wage survey committee or those in a minority report filed by a local wage survey committee member.

(f) Local wage survey committees. The local wage survey committee plans and conducts the wage survey in the designated wage area.

§ 532.213 Preparation for full-scale wage surveys.

(a) The local wage survey committee, prior to each full-scale survey:

(1) Shall hold a public hearing to receive recommendations from interested parties concerning the area, industries, establishments and jobs to be covered in the wage survey.

(2) Shall prepare a summary of the hearings and submit it to the lead agency together with the committees' recommendations concerning the survey specifications prescribed in paragraph (c) of this section.

(3) May make any other recommendations concerning the local wage survey which it considers appropriate.

(b) The lead agency shall refer to the local wage survey committee's report to the agency wage committee for its consideration and recommendation if:

(1) The lead agency proposes not to accept the recommendations of the local wage survey committee concerning the specifications of the local wage survey; or

(2) The local wage survey committee's report is accompanied by a minority report.

(c) The lead agency shall develop survey specifications after taking into consideration the reports and recommendations received from the local wage survey committee and, if applicable, the agency wage committee. The survey specifications shall include:

(1) The counties to be surveyed;

(2) The industries to be surveyed;

(3) The standard minimum size of establishments to be surveyed;

(4) Establishments to be surveyed with certainty; and

(5) The survey jobs.

(d) A list of establishments and alternative establishments to be surveyed shall be prepared through use of statistical sampling techniques in accordance with the specifications developed by the lead agency. A copy of this list shall be forwarded to the local wage survey committee.

(e) Selection and appointment of data collectors.

(1) Wage data for appropriated fund surveys shall be collected by teams consisting of one local Federal Wage System employee recommended by the committee member representing the qualifying labor organization and one Federal employee recommended by local government activities. The data collectors shall be selected and appointed by the head of their employing agency.

(2) Wage data for nonappropriated fund surveys shall be collected by teams, each consisting of one local nonappropriated fund employee recommended by the committee member representing the qualifying labor organization and one nonappropriated fund employee recommended by local nonappropriated fund activities. The data collectors shall be selected and appointed by the head of their employing activity.

(f)(1) Each member of a local wage survey committee, each data collector, and any other person having access to data collected must retain this information in confidence, and is subject to disciplinary action by the employing agency or activity if the employee violates the confidence of data secured from private employers.

(2) Any violation of the above provision by a Federal employee must be reported to the employing agency and, in the case of a participant designated by a labor organization, to the recognized labor organization and its headquarters, and shall be cause for the lead agency immediately to remove the offending person from participation in the wage survey function.

§ 532.215 Conduct of full-scale wage survey.

(a) Wage survey data shall not be collected before the date the survey is ordered by the lead agency.

(b) Required data shall be obtained by personal visit.

(c) Alternate establishments shall be surveyed if data cannot be obtained from the primary establishments selected to be surveyed.

(d) The data collectors shall submit the data they collect to the local wage survey committee together with their recommendations about the use of the data.

§ 532.217 Review by the local wage survey committee.

(a) The local wage survey committee shall review all establishment information and survey job data collected in the wage survey for completeness and accuracy and forward all of the data collected to the lead agency together with a report of its recommendations concerning the use of the data. The local wage survey committee may make any other recommendations concerning the wage survey which it considers appropriate.

§ 532.219 Review by the lead agency.

(a) The lead agency shall review all material and wage survey data forwarded by the local wage survey committee to:

(1) Assure that the survey was conducted within the prescribed procedures and specifications;

(2) Consider matters included in the local wage survey committee report and recommendations;

(3) Exclude unusable data;

(4) Resolve questionable job matching and wage rate data; and

(5) Verify all computations reported on wage data collection forms.

(b) The lead agency shall determine whether the usable data collected in the wage survey are adequate for computing paylines, according to the following criteria:

(1) The wage survey data collected in an appropriated fund wage survey are adequate if the unweighted job matches include at least one survey job in the WG-01 through 04 range, one survey job in the WG-05 through 08 range, and two survey jobs in the WG-09 and above range, each providing at least 20 samples; and at least six other survey jobs, each providing at least 10 samples.

(2) The wage survey data collected in a nonappropriated fund wage survey are adequate if the unweighted job matches include at least two survey jobs in the NA-01 through 04 range providing 10 samples each, one survey job in the NA-01 through 04 range and three survey jobs in the NA-05 through 15 range providing five samples each; two other survey jobs, each providing at least five samples, and at least 100 unweighted samples for all survey jobs combined are used in the computation of the final payline.

(c)(1) If the wage survey data do not meet the adequacy criteria in paragraph (b) of this section, the lead agency shall analyze the data, construct lines and wage schedules, submit them to the agency wage committee for its review and recommendations and issue wage schedules, in accordance with the requirements of this subpart, as if the adequacy criteria were met.

(2) The lead agency may determine such a wage area to be adequate if the quantity of data obtained is large enough to construct paylines even though it was obtained for fewer than the prescribed number of jobs, or at different grade levels, or in different combinations than prescribed in paragraph (b) of this section.

(3) The lead agency may not determine a nonappropriated fund wage area to be adequate if fewer than 100 usable unweighted job matches were used in the final payline computation.

(d) If the lead agency determines a wage area to be inadequate under paragraph (c) of this section, it shall promptly refer the problem to the Office of Personnel Management for resolution.

§ 532.221 Statistical analysis of usable wage survey data.

(a)(1) The lead agency shall compute a weighted average rate, in accordance with the instructions issued by the Office of Personnel Management, for each appropriated fund survey job having at least 10 usable matches and for each nonappropriated fund survey job having at least five usable matches before establishment weights are applied.

(2) Incentive and piece-work rates shall be excluded when computing weighted average rates if, after establishment weights have been applied, 90 percent or more of the total usable wage survey data reflect rates paid on a straight-time basis only.

(b) The lead agency shall compute paylines from the weighted average rates computed under paragraph (a) of this section, as follows:

(1) Linear unit and frequency lines shall be computed according to the least squares statistical formula, based on all of the weighted average rates.

(2) Under the appropriated fund wage system a key point line shall be computed using the computed average rates for wage grades 3, 5, 10, and 13.

(3) Either or both of the lines computed according to paragraph (b)(1) of this section may be recomputed after eliminating data which cause distortion in the lines. If data for any of the grade points used under paragraph (b)(2) of this section are eliminated under this provision, the line computed under paragraph (b)(2) shall be recomputed with the same data eliminated.

(c) Usable data obtained from a particular establishment may not be modified or deleted in order to reduce the effect of an establishment's rates on survey findings, i.e., data will not be deleted or modified to avoid establishment domination.

§ 532.223 Consultation with the agency wage committee.

(a) The lead agency shall submit to the agency wage committee:

(1) The data collected in the wage survey;

(2) The report and recommendations of the local wage survey committee concerning the use of data;

(3) The lead agency's analysis of the data; and

(4) The lines computed from the data.

(b) After considering the information available to it, the agency wage committee shall report to the lead agency its recommendation for a proposed wage schedule derived from the data.

§ 532.225 Selection of payline and issuance of wage schedules.

(a) The lead agency shall select a payline and construct wage schedules therefrom for issuance as the regular wage schedules for the wage area, after considering all of the information, analysis, and recommendations made available to it pursuant to this subpart.

(b)(1) The lead agency shall prepare and maintain a record of all of the analysis and deliberations made under this subpart, documenting fully the basis for its determination under paragraph (a) of this section.

(2) The lead agency shall include in the record all of the wage survey data obtained and the recommendations and reports received from the local wage survey committee and the agency wage committee.

(c)(1) The lead agency shall issue the nonsupervisory, leader, and supervisory regular wage schedules for the local wage area, showing the rates of pay for all grades and steps.

(2) The wage schedules shall have a single effective date for all employees in the wage area, determined by the lead agency in accordance with 5 U.S.C. 5344.

(d) The head of each agency having employees in the local wage area to whom the regular wage schedules apply shall authorize the application of the wage schedules issued under paragraph (c) of this section to those employees, effective on the date specified by the lead agency.

§ 532.227 Wage change surveys.

(a) Wage change surveys shall be conducted in each wage area in years during which full-scale wage surveys are not conducted.

(b) Data shall be collected in wage change surveys only from establishments which participated in the preceding full-scale survey. Information concerning pay adjustments of general application in effect for jobs matched in each establishment which participated in the preceding full-scale survey shall be obtained.

(c) Data may be obtained in wage change surveys by telephone, mail, or personal visit. The chairperson of the local wage survey committee shall determine the manner in which establishments will be contacted for collection of data. Data may be collected by the local wage survey committee members or by data collectors appointed and assigned to two member teams in accordance with § 532.213(e) of this subpart.

(d) Wage change survey data may not be collected before the date ordered by the lead agency.

(e) The local wage survey committee shall review all wage change survey data collected and forward the data to the lead agency. Where appropriate, the committee shall also forward to the lead agency a report of unusual circumstances surrounding the survey.

(f) The lead agency shall review the wage change survey data and, if applicable, the report filed by the local wage survey committee.

(g)(1) The lead agency shall recompute the line selected under § 532.225(a) of this subpart in the preceding full-scale survey using the wage change survey data and shall construct wage schedules therefrom in accordance with § 532.203 and, if appropriate, § 532.205 of this subpart.

(2) The lead agency shall consult with the agency wage committee in accordance with § 532.223 of this subpart.

(3) Records of this process shall be maintained in accordance with § 532.225(b) of this subpart.

(h) The wage schedules shall be issued and authorized in accordance with § 532.225 (c) and (d) of this subpart.

§ 532.229 Minimum rates for hard-to-fill positions.

(a) The lead agency for a wage area may establish the rate of the second, third, fourth, or fifth step of one or more grades of an occupation as the mandatory minimum rate or rates payable by any agency for the occupation at one or more locations within a wage area based on findings that:

(1) The hiring rates prevailing for an occupation in private sector establishments in the wage area are higher than the rate of the first step of the grade or grades of the occupation; and

(2) Federal installations and activities in the wage area are unable to recruit qualified employees at the rate of the first step of the grade or grades of the occupation.

(b) Any authorizations made under paragraph (a) of this section shall be indicated on the regular wage schedule for the wage area.

(c) Any authorizations made under paragraph (a) of this section shall be terminated with the issuance of a new regular wage schedule unless the conditions that warrant the authorizations continue and the new regular wage schedule continues that authorization.

(d) The lead agency, prior to terminating any authorization made under paragraph (a) of this section, shall require the appropriate official or officials at all installations or activities to which the authorization applies to discuss the termination with the appropriate official or officials of exclusively recognized employee organizations representing employees in the affected occupation. The agency officials shall report the results of these discussions to the lead agency.

(e) No employee shall have his/her pay reduced because of cancellation of an authorization made under paragraph (a) of this section.

§ 532.231 Special rates and special schedules.

(a) A lead agency, with the approval of the Office of Personnel Management, may establish special rates or special schedules for use within an area for specific occupations which are critical to the mission of a Federal activity based on findings that:

(1) Serious recruitment and retention problems exist;

(2) Rates on the authorized regular schedule are inadequate for the recruitment and retention of qualified employees; and

(3) Authorization of increased minimum rates under § 532.229 of this subpart will not solve the problems.

(b) Special rates shall be based on industry wage data for the specific occupations. A single rate shall be used when this represents industry practice; five rates with intervals of four percent between successive rates shall be used when rate ranges are used by industry, with the rate of the second step representing the weighted average of the industry rates.

(c) Any special rates established under paragraph (b) of this section shall be shown on the regular schedule which shall indicate each occupation and grade for which the rates are authorized. These rates shall be paid by all agencies having these occupations within the wage area.

(d)(1) Special schedules will ordinarily have the same grade, job ranking, and step-rate structure as regular schedules; only the wage rates will differ.

(2) If the use of grades is not appropriate, rates only shall be specified for each individual job.

(3) In other situations which require departure from regular schedule practices, the Office of Personnel Management authorization for the special schedule shall include instructions for its construction, application, and administration.

(4) Unless otherwise specified, positions covered by special wage schedules shall be subject to the general provisions of this part and to other applicable rules and regulations of the Office of Personnel Management.

§ 532.233 Regular appropriated fund wage schedules in foreign areas and certain U.S. possessions.

(a) The Office of Personnel Management shall issue regular appropriated fund wage schedules for U.S. citizens who are wage employees in foreign areas. The Department of Defense shall issue wage schedules for employees in Guam and Midway; and the Department of Transportation shall issue wage schedules for employees in American Samoa. These schedules will provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees

(b) Schedules will be—

(1) Computed on the basis of a simple average of all regular appropriated fund wage area schedules in effect on December 31; and

(2) Effective on the first day of the first pay period that begins on or after January 1 of the succeeding year.

(c) Payline rates for each nonsupervisory grade will be derived by computing a simple average of each payline rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the payline rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors will be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

(e) Pay schedules for nonsupervisory (WD) and supervisory (WN) production facilitating positions will be established by converting the WD and WN grade levels to regular FWS supervisory (WS) grade level as specified in the table which follows:

	WN supervisory level	WS grade
WD nonsupervisory level:		
1		3
2		4
3		5
4		6
5	1	7
6	2	8
7	3	9
8	4	10
9	5	11
10	6	12
11	7	13
	8	14
	9	15

(f) Notice of final rates will be published in the FEDERAL REGISTER. Because of yearly adjustments, these rates will not be codified in this section since the rates would be obsolete by the time they are published.

[50 FR 38634, Sept. 24, 1985]

§ 532.235 Regular nonappropriated fund wage schedules in foreign areas.

(a) The Office of Personnel Management shall issue regular nonappropriated fund wage schedules for U.S. citizens who are wage employees in foreign areas. These schedules will provide rates of pay for nonsupervisory, leader, and supervisory employees.

(b) Schedules will be —

(1) Computed on the basis of a simple average of all regular nonappropriated fund wage area schedules defined for the 48 contiguous states and the District of Columbia in effect on the first Sunday in January; and

(2) Effective on the first Sunday in January of each year.

(c) Payline rates for each nonsupervisory grade will be derived by computing a simple average of each payline rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the payline rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors will be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

(e) Notice of final rates will be published in the FEDERAL REGISTER. Because of yearly adjustments, these rates will not be codified in this section since the rates would be obsolete by the time they are published.

[50 FR 38634, Sept. 24, 1985]

Subpart C—Determining Rates for Principal Types of Positions

§ 532.301 Definitions.

For purposes of this subpart:

"Nearest similar wage area" means the nearest wage area which is most similar to the local wage area in terms of private employment, population, relative numbers of private employers in major industry categories, and kinds and sizes of industry establishments and in which adequate private establishments exist in the survey area whose activities are similar to those in the dominant industry.

"Principal types of appropriated or nonappropriated fund positions" means those groups of occupations which require work of a specialized nature and which are peculiar to a specific Government industry which is the dominant industry among the total wage employment in the wage area.

"Specialized private industry" means private industry establishments in those industry groups, comparable to the specialized Government industries listed in § 532.303 of this section, which must be included in a wage survey in order to obtain data comparable to a dominant industry.

§ 532.303 Specialized industry.

(a)(1) Under the appropriated fund wage system, a "specialized industry" is a Federal activity engaged in the production or repair of aircraft, ammunition, artillery and combat vehicles, communication equipment, electronic equipment, guided missiles, heavy duty equipment, shipbuilding, sighting and fire control equipment, or small arms.

(2) Under the nonappropriated fund wage system a "specialized industry" includes only nonappropriated fund operated eating and drinking places. Additional industries may be considered as specialized industries upon approval of the Office of Personnel Management.

§ 532.305 Dominant industry.

(a)(1) A specialized industry is a "dominant industry" if the number of wage employees in the wage area who are subject to the wage schedule for which the survey is made and employed in occupations which comprise the principal types of appropriated or nonappropriated fund positions in the specialized industry comprise:

(i) For appropriated fund activities,

(A) At least 25 percent of the total wage employment or

(B) 1,000 or more employees in a wage area having more than 4,000 wage employees; and

(ii) For nonappropriated fund activities

(A) At least 25 percent of the total wage employment or

(B) 100 or more wage employees in a wage area having 400 or more wage employees.

(2) If two or more specialized industries in a wage area qualify as dominant industries, the two specialized industries having the largest number of wage employees shall be the dominant industries for purposes of applying the requirements of this subpart.

§ 532.307 Determinating whether a dominant industry exists in a wage area.

(a) The chairperson of the local wage survey committee shall, before a full-scale wage survey is scheduled to begin, notify all appropriated or nonappropriated fund activities having employees subject to the wage schedules for which the survey is conducted so that organizations and individuals may submit written recommendations and supporting evidence to the local wage survey committee concerning principal types of appropriated or nonappropriated fund positions in the area. Each appropriated or nonappropriated fund activity shall publicize the opportunity to make such recommendations in accordance with the instructions issued by the Office of Personnel Management.

(b)(1) Before conducting a full-scale wage survey an occupational inventory of employees subject to the wage schedules for which the survey is conducted shall be obtained from each appropriated or nonappropriated fund activity in the area having such employees.

(2) After reviewing the occupational inventory and considering the recommendations received pursuant to paragraph (a) of this section, the local wage survey committee shall formulate its recommendations and prepare a written report concerning the existence of specialized industries within the wage area.

(3) The report of the recommendations, the occupational inventory, and the recommendations and supporting evidence received pursuant to paragraph (a) of this section shall be forwarded to the lead agency.

(c) The lead agency shall refer the occupational inventory and the reports received pursuant to paragraph (b) of this section to the agency wage committee for its consideration and recommendation if:

(1) The lead agency proposes not to accept the recommendation of the local wage survey committee concerning the specifications of the local wage survey; or

(2) The local wage survey committee's report is accompanied by a minority report.

(d) The lead agency shall determine, in writing, after taking into consideration the reports and recommendations received under paragraphs (b) and (c) of this section, and prior to ordering a full-scale wage survey to begin, whether the principal types of appropriated or nonappropriated fund positions in a local wage area comprise a dominant industry. The determination shall remain in effect until the next full-scale wage survey in the area.

§ 532.309 Determining adequacy of specialized private industry.

(a) Specialized private industry comparable to an appropriated fund dominant industry is adequate when:

(1) The survey area is one of the 25 largest Standard Metropolitan Statistical Areas, or the total number of employees of private industry establishments in the specialized private industry located in the survey area is at least equal to the total number of appropriated fund wage employees in occupations which comprise the principal types of appropriated positions in the dominant industry who are subject to the wage schedules for which the survey is made; or

(2) For any dominant industry except "ammunition," the job matches obtained from the specialized private industry include one regular survey job in the WG-01 through 04 range,

one regular survey job in the WG-05 through 08 range, one regular survey job in the WG-09 and above range, and one special survey job in the WG-09 and above range all providing at least 20 unweighted samples each; and three other regular or special survey jobs, each providing at least 10 unweighted samples.

(3) For the dominant industry "ammunition," the job matches obtained from the specialized survey industries include one regular survey job in the WG-01 through 04 range, one special survey job in the WG-05 through 08 range, and one regular survey job in the WG-09 through 15 range, all providing at least 20 unweighted samples each; and three other regular or special survey jobs, each providing at least 10 unweighted samples.

(b) Specialized private industry comparable to a nonappropriated fund dominant industry is adequate when:

(1) The total number of employees of private industry establishments similar to the dominant industry located in the survey are at least equal to the number of nonappropriated fund wage employees in positions which comprise the principal types of nonappropriated fund positions in the dominant industry who are subject to the wage schedules for which the survey is made; and

(2) The job matches obtained from all industries surveyed for regular survey jobs related to the dominant industry include one regular survey job in the NA-01 through 04 range providing at least 10 samples; and one regular survey job in the NA-05 through 15 range and one other regular survey job, each providing at least five samples.

§ 532.311 Survey of specialized private industry related to a dominant industry.

If it is determined that there are one or more dominant industries within a wage area, the lead agency shall insure that the survey includes the industries and survey jobs related to the dominant industries, in accordance with instructions in the Federal Personnel Manual. When the related industry within the local wage survey area fails to meet the criteria in § 532.309 of this subpart, the lead agency shall obtain data related to the dominant industry from the survey area of the wage area which is determined to be the nearest similar area which will provide adequate data under the criteria in § 532.309 of this subpart.

§ 532.313 Use of data from the nearest similar area.

(a)(1) The lead agency shall, in establishing the regular schedule under the provisions of this subpart, analyze and use the acceptable data from the nearest similar wage area together with the data obtained from inside the local wage survey area.

(2) The total number of job matches obtained from the nearest similar wage area to be used in establishing the regular wage schedule shall not exceed the number of job matches used which were obtained from inside the local wage survey area.

(3) If there are two dominant industries for which data are obtained from nearest similar areas, the total number of outside area job matches used for both specialized industries may not exceed the total number of job matches obtained in the local wage survey area.

(b)(1) The wage rates established for a grade by using data from the nearest similar area may not exceed the wage rates for the same grade in the nearest similar area.

(2) If data are obtained from two nearest similar areas for two dominant industries, the wage rates established for a grade by using these data may not exceed the higher of the wage rates for the same grade in the two nearest similar areas.

(c) The wage data obtained from the nearest similar area or areas may not be used to reduce the wage rates for any grade in the local area below the rates that would be established for that grade without the use of the data from the nearest similar area or areas.

Subpart D—Pay Administration

§ 532.401 Definitions.

In this subpart:

"Change to a lower grade" means a change of an employee, while continuously employed, to a job or grade level with a lower representative rate.

"Equivalent increase" means an increase or increases in an employee's scheduled rate of pay, equal to or greater than the amount of a within-grade increase in the grade in which the employee is serving except in certain situations specified by the Office of Personnel Management.

"Existing scheduled rate of pay" means the scheduled rate of pay received immediately before the effective date of a transfer, reassignment, promotion, change to a lower grade, within-grade increase, or revision of a wage schedule.

"Highest previous rate" means the highest scheduled rate of pay previously paid to a person while employed in a job in any branch of the Federal Government, a mixed-ownership corporation, or the government of the District of Columbia. It is based on a regular tour of duty under an appointment not limited to 90 days or less, or for a continuous period of no less than 90 days under one or more appointments without a break in service.

"Promotion" means a change of an employee, while continuously employed, to a job or grade level with a higher representative rate than his/her current grade; or retained grade, if applicable.

"Rate of basic pay" means the scheduled rate of pay plus any night or environmental differential.

"Reassignment" means a change of an employee, while serving continuously in the same agency, from one job to another without promotion or change to a lower grade.

"Representative rate" means the going rate, i.e., the rate or step keyed to the prevailing rate determination. For example:

(1) The established rate on a single rate schedule;

(2) The second rate on a five-rate regular wage schedule;

(3) The fourth rate on the General Schedule; or

(4) The fourth rate of a class under the Foreign Service Officer and Foreign Service Staff schedule.

"Retained rate" means the rate of pay an employee is receiving which is higher than the maximum scheduled rate of pay of the Federal Wage System grade or pay level to which the employee is assigned.

"Scheduled rate of pay" means the rate of pay fixed by law or administrative action, including a retained rate of pay, for the job held by an employee before any deductions and exclusive of additional pay of any kind.

§ 532.403 New appointments.

(a) Except as provided in paragraphs (b) and (c) of this section, a new appointment to a position shall be made at the minimum rate of the appropriate grade.

(b) An agency may make a new appointment at a rate above the minimum rate of the appropriate grade in recognition of an appointees' special qualifications.

(c) An agency shall make a new appointment at a step-rate above the minimum rate of a grade if the lead agency for the wage area has designated, in accordance with § 532.229, a step-rate above the first step-rate of a grade as the minimum step-rate at which a position may be filled.

§ 532.405 Use of highest previous rate.

(a)(1) Subject to the provisions of § 532.407 of this subpart and Part 536 of this chapter, when an employee is reemployed, reassigned, transferred, promoted, or changed to a lower grade, the agency may fix the pay at any rate of the new grade which does not exceed the employee's highest previous rate.

(2) However, if the employee's highest previous rate falls between two step-rates of the new grade, the agency may fix the pay at the higher of the two.

(b)(1) When an employee's type of appointment is changed in the same job, an agency may continue to pay the existing scheduled rate or may pay any higher rate of the grade which does not exceed the employee's highest previous rate.

(2) However, if the highest previous rate falls between two step rates of the grade, the agency may pay the higher rate.

(c)(1) The highest previous rate, if earned in a wage job, is the current rate of the grade and step-rate of the former job on the same type of wage schedule in the wage area in which the employee is being employed, or the actual earned rate, whichever is higher.

(2) If earned on a General Schedule or another pay system other than the Federal Wage System, it is the current rate for the same grade and rate of that schedule.

§ 532.407 Promotion.

(a) An employee who is promoted is entitled to be paid at the lowest scheduled rate of the grade to which promoted which exceeds the employee's existing scheduled rate of pay by at least four percent of the representative rate of the grade from which promoted.

(b) If there is no rate in the grade to which an employee is promoted which meets the requirement of paragraph (a) of this section the employee shall be entitled to the higher of: (1) the existing scheduled rate of pay in accordance with Part 536 of this Chapter; or (2) the maximum scheduled rate of the grade to which promoted.

(c) If the promotion is to a position in a different wage area, the agency shall determine the employee's pay entitlement as if there were two pay actions—a promotion and a reassignment—and shall process them in the order which gives the employee the maximum benefit.

§ 532.409 Grading or regrading of positions.

Except as provided in § 532.703(b)(10), a change in an employee's rate of basic pay as a result of the grading or regrading of the employee's position shall be effective on the date the grading or regrading action is finally approved by the agency or on a subsequent specifically stated date.

§ 532.411 Details.

An appropriated fund employee detailed to a position other than the position to which appointed shall be paid at the rate of the position to which appointed.

§ 532.413 Simultaneous action.

(a) If an employee becomes entitled to more than one pay change at the same time, the employing agency shall process the pay changes in the order which will provide the maximum benefit, except as required by paragraph (b) of this section.

(b) If an employee becomes entitled to an increase in pay and subject to a personnel or appointment change at the same time, the increased rate of pay is deemed to be the employee's existing scheduled rate of pay when the personnel or appointment change is processed.

§ 532.415 Application of new or revised wage schedules.

(a) The head of each installation or activity in a wage area shall place new or revised wage schedules into effect at the beginning of the first full shift on the date specified on the schedule by the lead agency.

(b) No agency may retroactively change any personnel or pay actions taken between the effective date of a new or revised wage schedule and the date it is actually put into effect if the personnel or pay actions taken during this period of time are more advantageous to an employee than the same personnel or pay action would have been had the new or revised wage schedule been placed into effect on the date specified by the lead agency.

(c) In applying a new or revised wage schedule, the scheduled rate of pay of an employee paid at one of the rates of the employee's grade on an old wage schedule shall be adjusted to the rate of pay established on a new or revised wage schedule for the same grade and step, regardless of whether the adjustment results in an increase or a decrease in the employee's scheduled rate of pay.

§ 532.417 *Within-grade* increases.

(a) An employee paid under a regular Federal Wage System schedule with a work performance rating of satisfactory or better shall advance automatically to the next higher step within the grade in accordance with section 5343(e)(2) of title 5, United States Code.

(b) Waiting periods for within-grade increases shall begin:

(1) On the first day of a new appointment as an employee subject to this part;

(2) On the first day of a period of service after a break in service or time in a nonppay status in excess of 52 weeks; or

(3) On receipt of an equivalent increase.

(c) Creditable service. The following periods of time shall be considered creditable service for purposes of waiting periods for within-grade increases:

(1) Time during which an employee is in receipt of pay, including periods of leave with pay;

(2) Time during which an employee with a prearranged regular scheduled tour of duty is in a nonpay status to the extent that the time in a nonpay status does not exceed, in the aggregate:

(i) One workweek in the waiting period for step 2;

(ii) Three workweeks in the waiting period for step 3; or

(iii) Four workweeks in the waiting period for steps 4 and 5;

(3) Time during which an employee or former employee is on leave of absence or is separated from Federal service and is entitled to continuation of pay or compensation under subchapter I of chapter 81 of title 5, United States Code. This does not apply to prevailing rate employees within a Department of Defense or Coast Guard nonappropriated fund instrumentality;

(4) A period of military service when:

(i) An employee is on leave of absence to perform such service and returns to pay status through the exercise of a restoration right provided by law, Executive order, or regulation; or

(ii) A former employee is reemployed with the Federal Service not later than 52 calendar weeks after separation from such service or hospitalization continuing thereafter for a period of not more than one year. Military service means honorable active service in the Armed Forces, in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or as a commissioned officer of the Environmental Science Services Administration after June 30, 1961, but does not include service in the National Guard, except when ordered to active duty in the service of the United States.

(5) The time between an employee's separation from an earlier position and the date of the employee's return to a civilian position through the exercise of a reemployment right granted by law, Executive Order, or regulation;

(6) Time during which an employee is performing service, which is creditable under section 8332(b) (5) or (7) of title 5, United States Code;

(7) The time during which an employee is detailed to a non-Federal position under subchapter VI of chapter 33 of title 5, United States Code; and

(8) Nonworkdays intervening between an employee's last regularly scheduled workday in one position and the first regularly scheduled workday in a new position.

(9) Time during which an employee is temporarily employed by another agency in a position covered by this subpart.

(d) Effective date. A within-grade increase shall be effective at the beginning of the first applicable pay period following the day an employee becomes eligible for the increase.

[46 FR 21344, Apr. 10, 1981, as amended at 49 FR 37055, Sept. 21, 1984]

§ 532.419 Grade and pay retention.

(a) In accordance with section 9(a)(1) of Pub. L. 92-392 (86 Stat. 564, 573), an employee's initial rate of pay on conversion to a wage schedule established under the provisions of subchapter IV of chapter 53, title 5, United States Code, shall be determined under conversion rules prescribed by the Office of Personnel Management.

(b) Except as provided in paragraph (a) of this section, an employee's eligibility for grade and/or pay retention shall be determined in accordance with the provisions of Part 536 of this title.

Subpart E—Premium Pay and Differentials

§ 532.501 Definitions.

In this subpart:

"Administrative workweek" means a period of seven consecutive calendar days.

"Basic workweek" for full time employees means the days and hours within an administrative workweek which make up the employee's regularly scheduled 40-hour workweek.

"Environmental differential" means a differential paid for a duty involving unusually severe hazards or working conditions.

"Irregular or occasional overtime work" means overtime work which is not part of the regularly scheduled administrative workweek.

"Night shift differential" means the differential paid the employee when the majority of regularly scheduled nonovertime hours worked fall between 3 p.m. and 8 a.m.

"Overtime work" means authorized and approved hours of work performed by an employee in excess of eight hours in a day or in excess of 40 hours in an administrative workweek, and includes irregular or occasional overtime work and regular overtime work.

"Premium pay" means additional compensation for overtime, or Sunday work, and standby duty.

"Sunday work" means work performed during a regularly scheduled tour of duty within a basic workweek when any part of that work which is not overtime work is performed on Sunday.

"Regular overtime work" means overtime work which is a part of the regularly scheduled administrative workweek.

"Regularly scheduled administrative workweek" means:

(1) For full-time employees, the period within an administrative workweek within which employees are scheduled to be on duty regularly.

(2) For part-time employees, it means the days and hours within an administrative workweek during which these employees are scheduled to be on duty regularly.

"Tour of duty" means the hours of a day, i.e., a daily tour of duty, and the days of an administrative workweek, i.e., a weekly tour of duty, that are scheduled in advance and during which an employee is required to perform on a regularly recurring basis.

§ 532.503 Overtime pay.

(a)(1) Employees shall be paid overtime pay in accordance with sections 5544 and 5550 of title 5, United States Code or, if eligible, under the provisions of the Fair Labor Standards Act of 1938, as amended, whichever provides the greater overtime benefit. The rules for hours of work determinations and overtime pay entitlements for nonexempt employees under the Fair Labor Standards Act are contained in Part 551 of this subchapter.

(2) Hours of work in excess of eight in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

(b) Effect of leave on overtime pay.

(1) Hours during which an employee is absent from duty on paid leave during time when the employee otherwise would have been required to be on duty shall be considered hours of work in determining whether the employee is entitled to overtime pay for work performed in excess of eight hours a day or 40 hours a week.

(2) For the purposes of paragraph (b)(1) of this section paid leave includes but is not limited to:

(i) Annual or sick leave;

(ii) Authorized absence on a day off from duty granted by Executive or administrative order; or

(iii) Authorized absence on a legal holiday;

(3) Hours during which an employee is absent from duty on leave without pay during a time when he/she otherwise would have been required to be on duty shall not be considered hours of work in determining whether he/she is entitled to overtime pay for work performed in excess of eight hours in a day or 40 hours in a week.

(c) Callback overtime work. Irregular or occasional overtime work performed by an employee on a day when work was not regularly scheduled for the employee or for which the employee has been required to return to the place of employment shall be considered to be at least two hours in duration for the purpose of overtime pay, regardless of whether the employee performs work for two hours.

(d)(1) An employee regularly assigned to a night shift, who performs overtime work which extends into or falls entirely within a day shift, shall be entitled to overtime pay computed on the night rate.

(2) When the overtime is performed on a nonworkday the employee shall be entitled to overtime pay computed on the rate of the employee's last previous regularly scheduled shift.

(e)(1) An employee regularly assigned to a rotating schedule involving work on both day and night shifts who performs overtime work which extends or falls entirely within the succeeding shift shall be entitled to overtime pay computed on the rate of the employee's regularly scheduled shift in effect for that calendar day.

(2) When the overtime is performed on a nonworkday, the employee shall be entitled to overtime pay computed on the average rate of basic pay for all regularly scheduled shifts worked by the employee during the basic workweek.

§ 532.505 Night shift differentials.

(a) Employees shall be entitled to receive night shift differentials in accordance with section 5343 of title 5, United States Code.

(b) Absence on holidays. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for a period of excused absence on a legal holiday or other day off from duty granted by Executive or administrative order.

(c) Travel status. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for hours of the employee's tour of duty while in official travel status, regardless of whether the employee is performing work.

(d) Temporary tour of duty.

(1) An employee regularly assigned to a night shift who is temporarily assigned to a day shift or to a night shift having a lower night shift differential shall continue to receive the regular night shift differential, a temporary detail for training purposes is also included—see 5 CFR 410.602.

(2) An employee regularly assigned to a night shift, who is temporarily assigned to another night shift having a higher differential, shall be paid the higher differential if a majority of the employee's regularly scheduled nonovertime hours of work on the temporary shift fall within hours having the higher differential.

(3) An employee regularly assigned to a day shift who is temporarily assigned to a night shift shall be paid a night shift differential.

(e) Leave with pay.

(1) An employee regularly assigned to a night shift shall be paid a night shift differential during a period of leave with pay.

(2) An employee regularly assigned to a day shift who is temporarily assigned to a night shift shall be paid a night shift differential for any leave with pay taken when scheduled to work night shifts.

(3) An employee assigned to a regular rotating schedule involving work on both day and night shifts shall be paid a night shift differential only for any leave with pay taken when scheduled to work night shifts.

(4) An employee who is not regularly assigned to a day shift or a night shift but whose shift is changed at irregular intervals shall be paid a night shift differential during leave with pay if the employee received a night shift differential for the last shift worked preceding leave with pay.

§ 532.507 Pay for holiday work.

(a) An employee who is entitled to holiday premium pay and who performs work on a holiday which is not overtime work shall be paid the employee's rate of basic pay plus premium pay at a rate equal to the rate of basic pay.

(b) An employee shall be paid for overtime work performed on a holiday at the same rate as for overtime on other workdays.

(c) An employee who is entitled to holiday premium pay and who is required to report for work on a holiday shall be paid at least two hours of holiday pay whether or not work is actually performed.

§ 532.509 Pay for Sunday work.

A wage employee whose regular work schedule includes an 8-hour period of service which is not overtime work, a part of which is on Sunday, is entitled to additional pay under the provisions of sections 5544 and 5550 of title 5, United States Code.

§ 532.511 Environmental differentials.

(a) Entitlements to environmental differential pay.

(1) In accordance with section 5343(c)(4) of title 5, United States Code, an employee shall be paid an environmental differential when exposed to a working condition or hazard that falls within one of the categories approved by the Office of Personnel Management.

(2) Each installation or activity must evaluate its situations against the guidelines issued by the Office of Personnel Management to determine whether the local situation is covered by one or more of the defined categories.

(b) Amount of environmental differential payable.

(1) An employee entitled to an environmental differential shall be paid an amount equal to the percentage rate authorized by the Office of Personnel Management for the category in which the working condition or hazard falls, multiplied by the rate for the second step of WG-10 for the appropriated fund employees and NA-10 for the nonappropriated fund employees on the current regular non-supervisory wage schedule for the wage area for which the differential is payable, counting one-half cent and over as a whole cent.

(2) An employee entitled to an environmental differential on an actual exposure basis shall be paid a minimum of one hour's differential pay for the exposure. For exposure beyond one hour, the employee shall be paid in increments of one quarter hour for each 15 minutes or portion thereof in excess of 15 minutes. Entitlement begins with the first instance of exposure and ends one hour later, except that when exposure continues beyond the hour, it shall be considered ended at the end of the quarter hour in which exposure actually terminated.

(3) An employee entitled to an environmental differential on the basis of hours in a pay status shall be paid for all hours in a pay status on the day on which he/she is exposed to the situation.

(4) An employee may not be paid more than one environmental differential for a particular period of work.

(5) The payment of environmental differential pay is computed on the basis of the highest environmental differential rate authorized during the period of entitlement.

(6) The number of hours an employee is paid environmental differential shall not exceed the number of hours of duty performed by the employee on the day of exposure except as required by paragraph (b)(3) of this section.

(c) *Basic pay.* Environmental differential pay is part of basic pay and shall be used to compute premium pay (pay for overtime, holiday, or Sunday work), the amount from which retirement deductions are made, and the amount on which group life insurance is based. It is not part of basic pay for purposes of lump-sum annual leave payments and severance pay nor is its loss an adverse action.

[46 FR 21344, Apr. 10, 1981, as amended at 49 FR 49841, Dec. 24, 1984]

§ 532.513 Flexible and compressed work schedules.

Federal Wage System employees, other than Nonappropriated Fund employees of the Armed Forces as defined in 5 U.S.C. 2105(c), who are authorized to work flexible and compressed work schedules under sections 6122 and 6127 of 5 U.S.C. shall be paid premium pay in accordance with the provisions of subchapter II of chapter 61 of title 5, United States Code. Subpart D of Part 610 of this title supplements that subchapter and must be read with it.

[49 FR 37055, Sept. 21, 1984]

Subpart F—Job Grading System

§ 532.601 General.

The Office of Personnel Management shall establish a job grading system in accordance with section 5346 of title 5, United States Code. Appropriate instructions to agencies on the application of the job grading system shall be published by the Office of Personnel Management. Agencies are required to grade all jobs subject to this part in accordance with such instructions.

Subpart G—Job Grading Reviews and Appeals

§ 532.701 General.

A prevailing rate employee may at any time appeal the occupational series, grade, or title to which the employee's job is assigned, but may not appeal under this subpart the standards established for the job, nor other matters such as the accuracy of the job description, the rate of pay, or the propriety of a wage schedule rate.

§ 532.703 Agency review.

(a) Each agency shall establish a system processing an employee's application for review of the correctness of the series, grade or title of the employee's job.

NOTE: Application for review will be hereafter referred to as an "application".

(b) In establishing the system required by this subpart, an agency, as a minimum, shall provide that the following requisites be met.

(1) The provisions of the system shall be published and the agency's employees shall be informed where a published copy is available for review.

(2) An application shall be in writing and contain the reasons the employee believes the position is erroneously graded.

(3) An application may be filed at any time. However, when the application involves a downgrading or other job-grading action which resulted in a reduction in grade or loss of pay, in order to be entitled to retroactive corrective action:

(i) An employee not covered by Part 536 of this chapter who is covered by Subparts C and D of Part 752 of this chapter must appeal the change to lower grade under the provisions of § 752.405 of this chapter. An appeal under Subpart C and D of Part 752 of this chapter precludes the employee from filing an application under this section; or

(ii) An employee not covered by Subparts C and D of Part 752 of this chapter must request a review under the provisions of this subpart within 15 calendar days of the effective date of the change to lower grade in order to obtain any retroactive benefits. An employee receiving grade retention under Part 536 of this chapter has no appeal rights under Part 752 of this chapter, but is covered by the provisions of this subpart.

(4) An employee may select a representative, and the employee and the representative, when the representative is also employed by the same agency, shall be granted a reasonable time in presenting the application and shall be assured freedom from restraint, interference, coercion, or reprisal in presenting the application.

(5) An employee shall promptly furnish such facts as may be requested by the agency.

(6) An application shall be canceled and the employee so notified in the following circumstances:

(i) On receipt of a written request by the employee;

(ii) Failure of the employee to furnish required information or otherwise fail to proceed with the advancement of his application in a timely manner; however, instead of cancellation for failure by the employee to prosecute, the application may be adjudicated by the agency if the information is sufficient for that purpose; or

(iii) On notice that the employee has left the job, except when the employee would be entitled to the retroactive benefits including benefits allowable after the death of an employee appellant.

(7) The application shall be processed and decided promptly. No more than one level of review may be established within an agency before a final decision is issued, and that level of review, when possible, must be above

the level of classification authority which classified the position.

(8) When an employee not subject to Subparts C and D of Part 752 of this title applies for a review of a downgrading or other job-grading action that resulted in a reduction of pay, and the decision of an agency reverses in whole or in part the downgrading or other job-grading action, the effective date of that decision shall be retroactive to the effective date of the action being reviewed when the initial application to the agency was submitted in accordance with paragraph (b)(3)(ii) of this section. However, when the agency decision raises the grade or level of the job above its grade or level immediately preceding the downgrading, retroactivity shall apply only to the extent of restoration to the grade or level immediately preceding the downgrading.

(9) The right to a retroactive effective date is preserved when an agency finds that an employee was not notified of the applicable time limit for review and was not otherwise aware of the limit or that circumstances beyond the employee's control prevented filing the application within the prescribed time limit.

(10) The effective date of a change in the series, title or grade of a job shall be specified in the agency decision and, unless otherwise required by this subpart, may not be earlier than the date of the decision. However, in no case may it be later than the beginning of the first pay period which begins after the 60th calendar day from the date the application was filed. However, when the agency decision will result in a downgrading or other job-grading action that will reduce the pay of the incumbent of the job, the effective date may not be set earlier than the date on which the decision can be effected in accordance with procedures required by applicable law and regulation. The retroactive reclassification may be based only on duties and responsibilities existing at the time of downgrading or loss of pay and not on duties and responsibilities later assigned.

(11) When an application has been properly filed and the employee dies before the application has been processed, if a favorable decision would entitle the employee to retroactive corrective action, the application will be processed to completion after the employee's death and any appropriate corrective action made by amending the records of the agency.

(12) The decision on an application shall:

(i) Be based on the record,

(ii) Be in writing,

(iii) Inform the employee either in the decision or as an attachment to the decision of the reasons for the decision, including an analysis of the employee's job, i.e., comparing the job with the appropriate standard, and

(iv) Inform the employee of the right to appeal the decision to the Office of Personnel Management and of the time limits within which the application must be filed.

(c) The agency is responsible for compiling and maintaining a job-grading review file which will constitute the record and which will not contain any document or information which the employee has not been given an opportunity to review.

§ 532.705 Appeal to the Office of Personnel Management.

(a)(1) An employee may appeal the occupation series, grade or title of the job to the appropriate office of the Office of Personnel Management only (i) after the agency has issued a decision under the system established under § 532.703; and (ii) if the employee files the appeal with the Office of Personnel Management within 15 calendar days after receipt of the decision of the agency.

(2) The Office of Personnel Management may extend this time limit if it is shown that the employee was not notified of the applicable time limit and was not otherwise aware of the limit, or that circumstances beyond the employee's control prevented filing an appeal within the prescribed time limit.

(b) An employee shall make the appeal in writing and shall identify specifically the portions of the decision or job analysis of the agency with which the employee disagrees.

(c) The Office of Personnel Management shall base its decision on the record established in the agency, except that when the Office of Personnel Management investigates or audits the job it may take the results of the investigation or audit into consideration. In the event the Office of Personnel Management audits the job, the employee's representative may not be present.

(d) The Office of Personnel Management shall notify the employee and the agency in writing of its decision. The effective date of a change in the series, title and grade of a job directed by the Office of Personnel Management shall be specified in the decision of the Office of Personnel Management, computed from the date the employee filed the application with the agency, and determined under § 532.705(b)(10). However, when the agency decision will result in a downgrading or other job-grading action that will reduce the pay of the incumbent of the job, the effective date may not be set earlier than the date on which the decision can be effected in accordance with procedures required by applicable law and regulation.

(e) The appeal of an employee shall be canceled and the employee so notified in the following circumstances:

(1) On receipt of the employee's written request;

(2) On failure to prosecute, when the employee does not furnish requested information and duly proceed with the advancement of the appeal; however, instead of cancellation for failure to prosecute, an appeal may be adjudicated if the information is sufficient for that purpose. The Office of Personnel Management may reopen a canceled appeal on a showing that circumstances beyond the control of the employee prevented the employee from prosecuting the appeal; or

(3) On notice that the employee has left the job, except when entitled to retroactive benefits, including benefits allowable after the death of an appellant.

(f) The Office of Personnel Management may, at its discretion, reopen and reconsider any job-grading decision made by a regional office when requested by an employee or an agency. This authority may be used under circumstances such as the following:

(1) An employee or an agency presents material facts not previously considered by the regional office involved;

(2) There is room for reasonable doubt as to the appropriateness of a regional office decision; or

(3) The potential impact of a regional office decision on similar jobs under other regional offices is sufficiently significant to make central office review of the decision desirable.

(g) The Director of the Office of Personnel Management, may, in his discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the previous decision was issued;

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(3) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Director of the Office of Personnel Management.

(h) A final decision by the Office of Personnel Management constitutes a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government.

§ 532.707 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under this part. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502)

[50 FR 3313, Jan. 24, 1985]

Subpart H—Performance and Special Awards

Authority: 5 U.S.C. 5343, 5346.

Source: 48 FR 49488, Oct. 25, 1983, unless otherwise noted.

§ 532.801 General.

(a) Performance awards for prevailing rate employees are covered under the provisions of Subpart F of Part 531 of this chapter.

(b) Awards for employee accomplishments beyond normal job responsibilities and performance standards are covered under Part 451 of this chapter.

PART 534—PAY UNDER OTHER SYSTEMS

Subpart A—[Reserved]

Subpart B—Student-Employees in Government Hospitals

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Subpart C—Scientific and Professional Positions Requiring Specially Qualified Personnel

534.301 Approval of agency pay determinations and adjustments.

Subpart D—Pay under the Senior Executive Service

534.401 Reducing individual pay to a lower rate in the Senior Executive Service.
534.402 Restrictions on reducing the pay of senior executives who converted under Subpart C of Part 317 of this chapter.
534.403 Performance awards.
534.404 Pay computation for members of the Senior Executive Service.

Authority: 5 U.S.C. 1104, 5351, 5352, 5353, 5361, 5384, 5385, 5541.

Subpart A—[Reserved]

Subpart B—Student-Employees in Government Hospitals

Source: 44 FR 54693, Sept. 21, 1979, unless otherwise noted.

§ 534.201 General.

Under subchapter V of chapter 53 of title 5, United States Code (U.S.C. 5351-5356), agencies may pay stipends and provide certain services to certain student-employees assigned or attached to hospitals, clinics, or medical or dental laboratories operated by agencies. Student-employees covered under the program are excluded from certain provisions of law relating to classification, General Schedule pay, premium pay, leave, and hours of duty. This subpart authorizes the coverage of certain positions under this program and establishes maximum stipends for student-employees in the program.

§ 534.202 Coverage.

In addition to the student-employees specified in 5 U.S.C. 5351(2)(A), the following student-employees are covered under this program, provided they are assigned or attached principally for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency:

(1) Any student-employee whom an agency finds is properly covered under

this program, provided that the student-employee is a registered student at an accredited academic institution and that the assignment or attachment for training purposes to the hospital, clinic, or medical or dental laboratory is a part of a medical or dental training program accredited by an appropriate accrediting body;

(2) Any student-employee whom an agency finds is properly covered under this program, provided that the student-employee, during the period of assignment or attachment to the hospital, clinic, or medical or dental laboratory, will receive experience or training that is required to obtain a certificate or license in a medical or dental field; or

(3) Any student-employee not otherwise covered under this program whom the Office of Personnel Management approves for coverage as a student-employee under this program.

§ 534.203 Maximum stipends.

(a) Except as authorized under paragraph (b) or (c) of this section, stipends are to be set by the agency, subject to the maximum stipends prescribed in the following table:

Maximum Stipends Prescribed

Code symbol	Academic level of approved training program	Maximums by grade and step [1]
L-A	Below high school graduation	GS-1-1 (minus 3 steps).
L-1	First year college undergraduate	GS-2-1 (minus 3 steps).
L-2	Second year college undergraduate	GS-3-1 (minus 3 steps).
L-3	Third year college undergraduate	GS-3-3 (minus 3 steps).
L-4	Fourth year college undergraduate	GS-4-2 (minus 3 steps).
L-5	First year postgraduate predoctoral	GS-5-1 (minus 3 steps).
L-6	Second year postgraduate predoctoral	GS-7-1 (minus 3 steps).
L-6	Third year medical school	GS-7-1 (minus 3 steps).
L-7	Third year postgraduate predoctoral	GS-9-1 (minus 3 steps).
L-7	Fourth year medical school	GS-9-1 (minus 3 steps).
L-8	Fourth year postgraduate predoctoral	GS-10-1 (minus 3 steps).
L-8	Medical or dental internship	GS-10-1 (minus 3 steps).
L-9	Fifth year postgraduate w/o doctorate	GS-11-1 (minus 3 steps).
L-9	First year postgraduate (Ph. D.)	GS-11-1 (minus 3 steps).
L-9	First year medical or dental residency	GS-11-1 (minus 3 steps).
L-10	Second year postdoctoral (Ph. D.)	GS-12-1 (minus 3 steps).
L-10	Second year medical or dental residency	GS-12-1 (minus 3 steps).
L-11	Third year medical or dental residency	GS-12-4 (minus 3 steps).
L-12	Fourth year medical or dental residency	GS-13-1 (minus 3 steps).
L-13	Fifth year medical residency	GS-14-1 (minus 3 steps).

[1] The maximum money amount in each case is derived by subtracting from the statutory salary for the appropriate grade a sum equivalent to three step increments of that grade. This amount includes overtime pay, maintenance allowances, and other payments in money or kind.

(b) An agency may pay a student-employee a stipend in excess of the amount prescribed under paragraph (a) of this section only if the Office of Personnel Management has determined that a higher maximum stipend is warranted for the student-employee.

(c) Maximum stipends for positions in the Public Health Service in which duty requires intimate contact with persons afflicted with leprosy are increased above the rates prescribed in paragraph (a) of this section to the same extent that additional pay is provided by Public Health Service Regulations (42 CFR 22.1) for employees subject to the General Schedule (Part 531 of this chapter).

(d) Overtime pay, maintenance allowances, and other payments in money or kind for a student-employee must be considered as part of the student-employee's stipend for the purposes of this section, and therefore, may not be used to cause the stipend to exceed the maximum stipend established under this section.

(e) A trainee at a non-Federal hospital, clinic, or medical or dental laboratory who is assigned to a Federal hospital, clinic, or medical or dental laboratory as an affiliate for a part of his or her training may not receive a stipend from the Federal agency other than any maintenance allowance that is provided.

§ 534.204 Previous authorizations.

The provisions of this subpart do not terminate any authorization approved by the Civil Service Commission or the Office of Personnel Management before February 15, 1979, and such authorizations remain in effect until modified or terminated by an agency or the Office of Personnel Management in accordance with the provisions of this subpart.

Subpart C—Scientific and Professional Positions Requiring Specially Qualified Personnel

§ 534.301 Approval of agency pay determinations and adjustments.

Each rate of pay fixed for a scientific or professional position requiring specially qualified personnel under section 5361 of title 5, United States Code, or a similar statute, is subject to the prior approval of OPM. The prior approval of OPM is required for both original and subsequent appointments to these positions, and for the pay adjustment for an incumbent of such a position. When the agency requests the approval of OPM for a rate of pay or a pay adjustment, it shall submit adequate supporting information.

[33 FR 12456, Sept. 4, 1968]

Subpart D—Setting Individual Basic Pay Under the Senior Executive Service

§ 534.401 Reducing individual pay to a lower rate in the Senior Executive Service.

Reductions of basic pay under the provisions of section 5383(c) of title 5, United States Code, may not reduce an individual's pay more than one rate in the ES pay schedule in a 12 month period.

[45 FR 56793, Aug. 26, 1980]

§ 534.402 Restrictions on reducing the pay of senior executives who converted under Subpart C of Part 317 of this chapter.

The rate of basic pay of an Executive in the Senior Executive Service who entered the Service under the Conversion provisions of Subpart C of Part 317 of this chapter cannot be reduced below the basic payable salary for that individual immediately prior to converting to the Service during an appointment in the Service.

[45 FR 56793, Aug. 26, 1980]

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES).

(b) The total amount of performance awards paid during a fiscal year by an agency may not exceed the greater of—

(1) Three percent of the aggregate career SES basic pay as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or

(2) Fifteen percent of the average annual rates of basic pay to career SES appointees as of the end of the fiscal year prior to the fiscal year in which the award payments are made.

(c) The amount of a performance award paid to an individual career appointee may not be less than 5 percent nor more than 20 percent of the appointee's rate of basic pay as of the end of the performance appraisal period.

(d) OPM shall issue guidance concerning the distribution of performance awards within an agency.

(e) Agencies shall submit their proposed distribution of performance awards, the proposed total amount of awards, and the aggregate payroll or average rate of basic pay as computed under paragraph (b) of this section to OPM for review and approval of the distribution before payment of the awards.

[50 FR 38636, Sept. 24, 1985]

§ 534.404 Pay computation for members of the Senior Executive Service.

(a) Except as provided in paragraph (b), pay for members of the senior executive service shall be computed in accordance with 5 U.S.C. 5504(b).

(b) From the first day of the first pay period beginning on or after January 1, 1984, to derive an hourly rate divide the annual rate by 2,087.

[49 FR 28389, July 12, 1984]

PART 536—GRADE AND PAY RETENTION

Subpart A—Definitions, Coverage and Applicability

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AUTHORITY: 5 U.S.C. 5361-5366.

SOURCE: 45 FR 85656, Dec. 30, 1980, unless otherwise noted.

Subpart A—Definitions; Coverage and Applicability

§ 536.101 General.

(a) Title VIII of Pub. L. 95-454 (The Civil Service Reform Act of 1978) provides that an employee who is placed in a lower grade as a result of reduction-in-force procedures, or whose position is reduced in grade as a result of reclassification of the position, is entitled to retain for a period of 2 years the grade held immediately before that placement or reduction. It also provides the authority for granting an employee indefinite pay retention. In addition to specifying criteria and conditions for the application of the grade and pay retention provisions, the law authorizes the Office of Personnel Management to extend the application of these provisions to other individuals and situations to which they would not otherwise apply.

(b) This part contains the regulations—including extensions, conditions, criteria, and procedures—which the Office of Personnel Management has prescribed for the administration of grade and pay retention. This part supplements and implements the provisions of 5 U.S.C. 5361-5366, and section 801(b) of Pub. L. 95-454, and must be read together with those sections of law.

§ 536.102 Definitions.

For the purposes of this part:

"Demotion at an employee's request" means a reduction in grade:

(1) Which is initiated by the employee for his or her benefit, convenience or personal advantage, including consent to a demotion in lieu of one for personal cause, and

(2) Which is not caused or influenced by a management action.

"Demotion for personal cause" means a reduction in grade based on the conduct, character, or unacceptable performance of an employee.

"Employee" means an employee as defined in 5 U.S.C. 5361 and also an individual who is moved from a position which is not under a covered pay schedule to a position which is under a covered pay schedule provided that the individual's employment immediately prior to the move was on other than a temporary or term basis.

"Employment on a temporary or term basis" means employment under an appointment having a definite time limitation or designated as temporary or term.

"Rate of basic pay" means, for any pay system, the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay or any kind such as night or environmental differentials in the case of a prevailing rate employee.

"Rate schedule" means a specific set of rates within a pay schedule.

"Reorganization" means the planned elimination, addition or redistribution of functions or duties either wholly within an agency or between agencies.

"Representative rate" means:

(1) The fourth rate of the grade in the case of a position under the General Schedule including the fourth rate of the corresponding grade of the General Schedule in the case of a position under the Performance Management and Recognition System established by chapter 54 of title 5, United States Code, the single rate of GS-18; or the individual's rate under the Senior Executive Service;

(2) The second rate of the grade of a position under a regular prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, or in the case of a position with a single rate, the single rate of that position; or

(3) The rate designated as representative of the position by the agency responsible for establishing and adjusting the schedule in the case of a position under a schedule different from those covered in paragraph (1) or (2) of this definition.

"Temporary promotion" means a promotion with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that promotion.

"Temporary reassignment" means a reassignment with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that reassignment.

[45 FR 85656, Dec. 30, 1980, as amended at 50 FR 11795, Mar. 25, 1985; 50 FR 35494, Aug. 30, 1985]

§ 536.103 Coverage and applicability of grade retention.

(a) Grade retention shall apply to an employee who moves to a position in a covered pay schedule which is lower graded than the position held immediately prior to the demotion in the following circumstances:

(1) As a result of reduction-in-force procedures; or

(2) As a result of a reclassification process.

(b) Except as otherwise covered in paragraph (a) of this section, the head of the agency may offer grade retention to eligible employees who are or might be reduced in grade as the result of a reorganization or reclassification decision announced by management in writing. When an employee is offered a position with grade retention in anticipation of a reduction in grade, the agency shall inform the employee in writing that acceptance of the position is not required and that declination of the offer has no effect on the employee's entitlement to grade retention under paragraph (a) of this section if he or she is actually moved to a lower graded position.

(c) (1) An employee who, immediately prior to being placed in a lower graded position as a result of reduction-in-force procedures, is in a position under a covered pay schedule, is eligible for grade retention only if the employee has served for 52 consecutive weeks or more in position(s) under a covered pay schedule at a grade(s) higher than the position in which the employee is placed.

(2) An employee is eligible for grade retention when his or her position has been reclassified at a lower grade only if the position which is being reduced had been classified at a higher grade(s) for a continuous period of at least 1 year immediately before the reduction.

(3) In situations other than those covered in paragraphs (c)(1) and (c)(2) of this section, an employee is eligible for grade retention if he or she, immediately prior to being placed in the lower grade, has served in a position in any pay schedule for 52 consecutive weeks or more provided that the service was in an agency as defined in 5 U.S.C. 5102 at a grade(s) higher than the position in which the employee is placed.

§ 536.104 Coverage and applicability of pay retention.

(a) Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced:

(1) As the result of the expiration of the 2-year period of grade retention; or

(2) As a result of reduction-in-force or reclassification when the employee does not meet the eligibility requirement for grade retention; or

(3) As a result of the reduction or elimination of scheduled rates, except those reflecting a decrease in the level of prevailing rates as determined by a wage survey, or as a result of the reduction or elimination of special schedules or special rates; or

(4) As a result of the placement of an employee into a non-special rate position or into a lower special rate position from a special rate position; or

(5) As a result of the placement of an employee in a position in a lower wage area or in a position in a different pay schedule; or

(6) As a result of the placement of the employee in a formal employee development program generally utilized Governmentwide: Upward Mobility, Apprenticeship, and Career Intern Programs.

(b) Except as otherwise covered in paragraph (a) of this section, the head of the agency may provide pay retention to eligible employees whose rates of basic pay would otherwise be reduced as the result of a management action.

§ 536.105 Exclusions

(a) Grade and pay retention shall not apply to an employee who:

(1) Moves from a position which is not in an agency as defined in 5 U.S.C. 5102; or

(2) Is identified under 5 U.S.C. 2105(c) except prevailing rate employees included under 5 U.S.C. 5361; or

(3) Is reduced in grade or pay for personal cause or at the employee's request; or

(4) Does not satisfactorily complete the probationary period prescribed by 5 U.S.C. 3321(a)(2), and, as a result, is removed from a supervisory or managerial position.

(b) An employee's entitlement to grade or pay retention is not affected by a temporary promotion or temporary reassignment. However, an employee serving under a temporary promotion or temporary reassignment may not retain a grade or rate of basic pay held during the temporary promotion or temporary reassignment.

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

§ 536.201 Comparison of grades in different pay schedules or pay systems.

For the purpose of determining whether the grade of a position is equal to, higher than, or lower than the grade of another position in movements between pay schedules or pay systems, the representative rates of the positions will be compared.

§ 536.202 Period of grade retention.

(a) An employee entitled to grade retention is entitled to retain that grade for 2 years beginning on the date the employee is placed in the lower graded position.

(b) If, during a 2-year period of grade retention, an employee is further reduced in grade under circumstances also entitling the employee to grade retention, the employee shall continue to retain the previous retained grade for the remainder of the previous 2-year retention period. At the end of that period, the employee shall be entitled to retain the grade of the position from which the further reduction in grade was made, until 2 years have passed from the date of the further reduction in grade.

§ 536.203 Determination of retained grade.

(a) An employee who is in a position under a covered pay schedule immediately prior to the action which gives entitlement to grade retention shall retain the grade held immediately prior to the action.

(b) An employee who is in a position not under a covered pay schedule immediatley prior to the action which gives entitlement to grade retention shall retain:

(1) The lowest grade of the covered pay schedule in which placed which has a representative rate equal to or higher than the representative rate of the grade held immediately prior to that placement; or

(2) The highest grade of the covered pay schedule in which placed, if there is no grade in the covered pay schedule with a representative rate equal to or higher than the representative rate held immediately prior to that placement.

§ 536.204 Determination of applicable rate schedule.

(a) When an employee entitled to grade retention is placed in a position in a different geographical area, the rate schedule which applies to the employee is the rate schedule in the new geographical area.

(b) When an employee entitled to grade retention is placed in a position in, or his or her position is changed to, a different occupational series, the rate schedule which applies to the individual is the rate schedule for the new occupational series.

§ 536.205 Determination of rate of basic pay.

(a) When an employee becomes entitled to grade retention, or moves to another position during a period of grade retention under conditions which permit continuation of the grade retention entitlement, the employee is entitled to the greatest of:

(1) His or her rate of basic pay before the movement, or

(2) The rate of basic pay from the applicable rate schedule for the grade and step (or relative position within a range of rates under the merit pay system) held by the employee before the movement, or

(3) The lowest rate of basic pay from the applicable rate schedule for the retained grade which equals or exceeds the employee's rate of basic pay before the movement.

(b) (1) When an employee becomes entitled to pay retention, or moves to another position while receiving pay retention, the employee's rate of basic pay immediately prior to eligibility or movement shall be compared with the range of rates of basic pay for the position to be occupied by the employee upon this eligibility or movement.

(2) The employee is entitled to the lowest rate of basic pay in the position to be occupied upon the eligibility or movement which equals or exceeds his or her rate of basic pay immediately prior to the eligibility or movement. If the rate of basic pay can be accommodated in the rate range of the latter position, pay retention does not apply.

(3) If the employee's rate of basic pay immediately prior to the pay retention exceeds the maximum rate of the position to be occupied when he or she becomes entitled to pay retention, the employee is entitled to the lower of:

(i) The rate of basic pay payable to the employee immediately before the reduction in pay; or

(ii) 150 percent of the maximum rate of basic pay payable for the new grade.

(c) When an increase in the scheduled rates of the grade of the employee's position occurs while the employee is under pay retention, the employee is entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the grade of the employee's current position.

(d) When, as a result of an increase in the scheduled rate(s) of the grade of the employee's position, an employee's retained rate of basic pay becomes equal to or lower than the maximum rate of that grade, the employee is entitled to the maximum rate of that grade and pay retention ceases.

(e) An employee who is serving on a temporary promotion at the time he or she becomes eligible for pay retention is entitled to retain the rate of basic pay which he or she would have been receiving at that time had the temporary promotion not occurred.

(f) When an employee's entitlement to grade or pay retention terminates, the employee's rate of basic pay shall be set in accordance with the provisions of Parts 531 and 532 of this title unless:

(1) Grade retention is being terminated as a result of the expiration of the 2-year retention period; or

(2) The employee is moved to a grade equal to or greater than the retained grade; or

(3) The employee is entitled to a higher rate of basic pay under paragraph (b) or (d) of this section.

§ 536.206 Criteria for a "reasonable offer".

For the purposes of this part, an offer of a position, in order to be considered a reasonable one, must fulfill the following conditions:

(1) The offer must be in writing, and must include an official position description of the offered position; and

(2) The offer must inform the employee that an entitlement to grade or pay retention will be terminated if the offer is declined and that the employee may appeal the reasonableness of the offer as provided in § 536.302; and

(3) The offered position must be of tenure equal to or greater than that of the position creating the grade or pay retention entitlement; and

(4) The offered position must be in an agency, as defined in 5 U.S.C. 5102, although not necessarily in the same agency in which the employee is serving at the time of the offer; and

(5) The offered position must be full-time, unless the employee's position immediately before the change creating entitlement to grade or pay retention was less than full-time, in which case the offered position must have a work schedule of no less time than that of the position held before the change; and

(6) The offered position must be in the same commuting area as the employee's position immediately before the offer, unless the employee is subject to a mobility agreement or a published agency policy which requires employee mobility.

§ 536.207 Loss of eligibility for grade retention.

(a) Eligibility for grade retention as a result of entitlement under § 536.103(a) of this part ceases if any of the following conditions occurs at any time after the employee receives written notice of the reduction in grade action, but before the commencement of the 2-year period of grade retention:

(1) The employee has a break in service of 1 workday or more; or

(2) The employee is demoted for personal cause or at the employee's request; or

(3) The employee is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

(4) The employee elects in writing to terminate the benefits of grade retention.

(b) Eligibility for grade retention as a result of entitlement under § 536.103(b) of this part ceases if any of the following conditions occurs at any time after the employee is informed by management of an impending reorganization or reclassification which will or could result in reduction in grade, but before the commencement of the 2-year period of grade retention:

(1) Any of the conditions listed in paragraph (a) of this section except that an employee's request for placement in a lower graded position, in lieu of displacing an employee at his or her grade under reduction-in-force procedures, is not a declination of a reasonable offer for grade retention purposes; or

(2) The employee fails to enroll in, or to comply with reasonable written requirements established to assure full consideration under, a program providing priority consideration for placement.

§ 536.208 Termination of grade retention.

(a) Grade retention terminates if any of the conditions listed in § 536.207(a) occurs after commencement of the 2-year period of grade retention.

(b) Grade retention as provided by § 536.103(b) also terminates if any of the conditions listed in § 536.207(b) occur after the commencement of the 2-year period of grade retention.

(c) The effective date of termination of grade retention benefits is:

(1) The day before placement if the termination is the result of the employee's placement in another position; or

(2) At the end of the last day of the pay period which the employee:

(i) Declines a reasonable offer; or

(ii) Elects to waive grade retention benefits; or

(iii) Fails to enroll in, or comply with reasonable written requirements established to assure full consideration under, a program providing priority consideration for placement.

§ 536.209 Loss of eligibility for, or termination of, pay retention.

(a) Eligibility for pay retention, or actual retention of pay, ceases if any of the following conditions occurs at any time after the employee had received written notification that his or her pay is to be reduced:

(1) The employee has a break in service of 1 workday or more; or

(2) The employee is entitled to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under pay retention; or

(3) The employee is demoted for personal cause or at the employee's request.

(b) The effective date of termination of pay retention benefits is:

(1) The day before placement if the termination is the result of the employee's placement in another position; or

(2) The end of the last day of the pay period in which the employee declines a reasonable offer.

Subpart C—Miscellaneous Provisions

§ 536.301 Placement and classification plans.

(a) Agencies which employ individuals subject to this part are required to establish in writing placement and classification plans.

(b) The placement and classification plans must commit the agency to:

(1) Identify and correct classification errors; and

(2) Correct position management problems; and

(3) Carry out specific planned efforts to place employees subject to this part; and

(4) Pursue placement efforts that do not adversely affect affirmative action goals.

§ 536.302 Appeal of termination of benefits because of reasonable offer.

(a) Except as provided for in paragraph (e) of this section, an employee whose grade or pay retention benefits are terminated on the grounds the employee declined a reasonable offer of a position the grade or pay of which is equal to or greater than his or her retained grade or pay may appeal the termination to the Office of Personnel Management.

(b) An employee who appeals under this section shall file the appeal in writing with the Office of Personnel Management not later than 20 calendar days after being notified that his or her grade of pay retention benefits have been terminated, and shall state in the appeal the reasons why the employee believes the offer of a position was not a reasonable offer.

(c) The Office of Personnel Management may conduct any investigation or hearing it determines necessary to ascertain the facts of the case.

(d) If a decision by the Office of Personnel Management on an appeal under this section requires corrective action by an agency, including the retroactive or prospective restoration of grade or pay retention benefits, the agency shall take that corrective action.

(e) Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed under the negotiated grievance and arbitration procedures in accordance with chapter 71 of title 5, United States Code, and the terms of any applicable collective bargaining agreement. An employee in an exclusively recognized bargaining unit may not appeal a termination of benefits to the Office of Personnel Management if the grievance procedure of the agreement by which he or she is covered provides for this review.

(f) Decisions issued by the Office of Personnel Management shall be considered final decisions. OPM may, at its discretion, reconsider an original appellate decision when new and material information is presented, in writing, by the employee or the agency, which establishes a reasonable doubt as to the appropriateness of the original decision. The request must show that the information was not readily available when the decision was issued. A request for reconsideration of an original appeal decision must be submitted to OPM within 30 calendar days of the date of the original decision.

[45 FR 85656, Dec. 30, 1980, as amended at 50 FR 428, Jan. 4, 1985; 50 FR 45389, Oct. 31, 1985]

§ 536.303 Documentation.

The application of the provisions of this part shall be documented in writing as a permanent part of the employee's Official Personnel Folder. As a minimum this documentation will include a copy of the letter described in § 536.304.

§ 536.304 Issuance of employee letters.

When an employee is entitled to grade and/or pay retention, the employing agency shall give to the employee, with a copy of the Notification of Personnel Action (SF-50) documenting entitlement to grade and/or pay retention, a letter describing the circumstances warranting grade and/or pay retention, and the nature of that entitlement.

§ 536.305 Effect of grade retention on quota spaces.

To determine the number of positions at GS-16, -17 and -18, or the equivalent, including positions in the Senior Executive Service, authorized by an Act of Congress, the grades (or SES levels) of the positions occupied, rather than the retained grades, are to be used.

§ 536.306 [Reserved]

§ 536.307 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned, the information contained in an appeal file in proceedings under this part, except when the disclosure would violate the proscription against the disclosure of medical information in §297.204(c) of this chapter. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502)

[50 FR 3313, Jan. 24, 1985]

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

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AUTHORITY: 5 U.S.C. Chapters 43 and 54.

SOURCE: 50 FR 35499, Aug. 30, 1985, unless otherwise noted.

§ 540.101 General.

Chapter 54 of title 5, United States Code (5 U.S.C. 5401 through 5410), provides for a Performance Management and Recognition System (PMRS) to recognize and reward quality performance by supervisors and management officials (as defined in 5 U.S.C. 7103(a) (10) and (11)) in positions classified in GS-13, 14, or 15. This part contains the regulations which the Office of Personnel Management (OPM) has prescribed for the Performance Management and Recognition System, and supplements the provisions of 5 U.S.C. 4302a, and 5401 through 5410.

§ 540.102 Definitions.

In this part:

"Agency" has the meaning given it in 5 U.S.C. 5102, but does not include the Office of the Architect of the Capitol, the Library of Congress, the Botanic Garden, or the Administrative Office of the United States Courts.

"Employee" means a supervisor or management official as defined in 5 U.S.C. 7103(a) (10) and (11) in positions classified in grades GS-13, GS-14 and GS-15.

"General pay increase" means that portion of the pay adjustment under 5 U.S.C. 5305 (or for special salary rate employees, any adjustment under 5 U.S.C. 5303) granted to PMRS employees based on performance.

"Merit increase" means the increase in basic pay for a PMRS employee granted under 5 U.S.C. 5404 which is equivalent to one-ninth of the difference between the maximum rate of the grade or special rate range and the minimum rate of the grade or special rate range.

"Pay adjustment period" means the period beginning on the first day of the first day period applicable to the employee starting on or after the first day of the month in which an adjustment would take effect under 5 U.S.C. 5303 or 5 U.S.C. 5305 and ending at the close of the day preceding the beginning of the following pay adjustment period.

"Performance award" means a performance-based cash payment to a PMRS employee made under 5 U.S.C. 5406. A performance award does not increase base pay.

"Performance award budget" means the amount of money allocated by an agency for distribution as performance awards to covered employees.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals.

"Performance pay decision" means the determination of the total amount of the general pay increase, merit increase, and performance award to be granted to an employee made by the officials also responsible for making the performance appraisal decisions, in accordance with OPM instructions.

"Rating" (See Summary Rating)

"Rating of record" means the summary rating, under 5 U.S.C. 4302a, required at the time specified in the performance management plan or at such other times as the plan specifies for special circumstances, including the written notice at any time that an employee's performance is unacceptable on one or more critical elements.

"Reference amount" means the sum of the minimum rate of the grade and one-third of the difference between the maximum and the minimum rate for that grade. In the General Schedule, the reference amount equals the dollar amount of the fourth step of a General Schedule grade, or in the case of a special rate range established under 5 U.S.C. 5303 and Part 530 of this chapter, the fourth step of such special rate range.

"Summary Rating" means the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.405(h) of this chapter).

[50 FR 35499, Aug. 30, 1985; 50 FR 40179, Oct. 1, 1985]

§ 540.103 Ranges of basic pay and employee coverage.

(a)(1) The range of annual rates of basic pay for each grade of the Performance Management and Recognition System shall be the same as the range of annual rates of basic pay for the corresponding grade of the General Schedule, or of a special salary rate range established under 5 U.S.C. 5303, except that an employee may be paid less than the minimum rate of basic pay of the grade or special rate range of the employee's position to the extent that payment of the lesser amount is the result of a performance evaluation of less than "Fully Successful."

(2) No PMRS employee's rate of basic pay may be increased by an amount that would cause that rate of basic pay to exceed the maximum rate for the range of basic pay applicable to the employee's position as specified in paragraph (a)(1) of this section, except in connection with retained pay, as provided in 5 U.S.C. 5363.

(b)(1) In accordance with the definitions in 5 U.S.C. 7103(a)(10) and (11), the head of each agency shall identify employees who are supervisors or management officials for purposes of coverage under the Performance Management and Recognition System.

(2) Employees who were appointed on the effective date of a pay adjustment under 5 U.S.C. 5303 or 5 U.S.C. 5305, and whose pay was set in accordance with the newly adjusted pay range for their grade, are not to be considered covered by the Performance Management and Recognition System on that day for the purposes of granting general pay increases, merit increases or performance awards under sections 5403, 5404, or 5406 of title 5, United States Code.

(c)(1) The head of an agency may request that the President exclude an agency, any unit of an agency, or any class of employees within any such unit from the PMRS. Such request must be filed with the Director, Office of Personnel Management, in writing, and must set forth the reasons why the agency, unit or class should be excluded.

(2) The head of an agency may request that OPM exclude an employee from the PMRS. Such request must be filed with the Office of Personnel Management in writing, and must set forth the reasons why the employee should be excluded.

§ 540.104 Performance Management and Recognition System performance ratings.

(a)(1) Except as provided in § 540.103(a)(2) of this part, each performance pay decision shall be based on the employee's rating of record for the current appraisal period for which performance pay decisions are being made under a performance appraisal system as defined in Part 430 of this chapter, approved by the Office of Personnel Management under 5 U.S.C. 4302a, or an equivalent performance appraisal system. If the agency determines it is appropriate to do so, performance pay decisions may also take into consideration the accomplishments of the employee's organization.

(2) All parts of a performance pay decision (i.e., general increase, merit increase, and performance award) must be based on the same rating of record.

(3) If an employee cannot be given a rating of record under 5 U.S.C. 4302a:

(i) The general increase will be determined in accordance with § 540.106(d); and

(ii) The merit increase and, as appropriate, the performance award will be determined in accordance with the procedure specified in § 540.108(a)(2).

(4) Notwithstanding the definition of rating of record in § 540.102 of this part, when a summary rating is transferred with an employee as required under § 430.407(g) of this part, and the new agency or organization cannot give the employee a rating of record as required in the Performance Management Plan, the transferred summary rating will be considered the employee's rating of record for the current appraisal period only for the purpose of making performance pay decisions.

(b)(1) The performance appraisal period on which the performance pay decision is based should be as close to the pay adjustment period as the agency deems practicable, but will not end earlier than June 30 not later than September 30 of the same year, or such other dates prescribed by OPM.

(2) In accordance with § 540.108(a) of this part, agencies are allowed to extend the performance appraisal

period to no later than September 30. Such extension will be considered to be part of the current appraisal period for which performance pay decisions are being made. Agencies determining to extend the appraisal period must specify the length of such extension in the Performance Management Plan required under § 540.111 of this part.

(c) Each agency shall establish procedures to manage the performance appraisal process for employees covered by the Performance Management and Recognition System, such as reviews of standards and ratings for difficulty and strictness of application, to obtain performance pay amounts that are equitable both in the value of the award to the employee and in the relationship of award between levels.

(d) Agencies and employees subject to the Performance Management and Recognition System, but not covered by chapter 43 of title 5, U.S.C., shall meet minimal performance appraisal requirements issued by OPM. Performance appraisal systems established under this paragraph shall, for purposes of this subpart, be equivalent to performance appraisal systems established under 5 U.S.C. 4302a.

§ 540.105 Performance recognition

(a) Each agency shall establish a procedure for determining the manner by which general increases, merit increases and performance awards shall be granted to PMRS employees, in accordance with instructions provided by OPM.

(b) Agency procedures for making performance pay decisions must include a requirement for an approval of each decision by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency, and also by the official(s) which responsibility for managing the performance award budget within the agency.

§ 540.106 General pay increases.

(a) General pay increases are to be made effective on the first day of the pay adjustment period.

(b) Except for paragraph (d) of this section, each general pay increase must be based on a rating of record for the current appraisal period for which performance pay decisions are being made. The following table prescribes the portion of the general pay increase employees must receive for each performance level, as defined in § 430.405(h) of this chapter.

GENERAL PAY INCREASES FOR EACH PERFORMANCE RATING LEVEL

If an employee's performance is rated at—	Then the employee receives—
Level 5, 4, or 3	The full general pay increase for the pay adjustment period.
Level 2	One-half the general pay increase for the pay adjustment period.
Level 1	No general pay increase for the pay adjustment period.

(c)(1) To determine the amount of the employee's general pay increase, the agency must use the employee's rate of basic pay on the day immediately preceding the pay adjustment period.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, the agency will determine the general pay increase for employees at performance level 3 (Fully Successful) or above as follows:

(A) Subtract the minimum rate of the rate range of the employee's position in effect on the day immediately preceding the pay adjustment period from the employee's rate of basic pay as determined under paragraph (c)(1) of this section;

(B) Subtract the minimum rate of the range in effect immediately preceding the pay adjustment period from the maximum of that rate range;

(C) Divide the result of paragraph (c)(2)(i)(A) by the result of paragraph (c)(2)(i)(B);

(D) Subtract the minimum rate of the new rate range for the grade from the maximum rate of that range;

(E) Multiply the result of paragraph (c)(2)(i)(C) by the result of paragraph (c)(2)(i)(D); and

(F) Add the result of paragraph (c)(2)(i)(E) to the minimum of the new rate range and round to the next higher whole dollar amount.

(ii) The salary of an employee which is at the minimum or maximum of the rate range in effect on the day immediately preceding the pay adjustment period will be adjusted to the minimum or maximum of the new rate range respectively.

(3) An employee whose performance is rated at level 1 or 2 and, therefore, receives less than the full general increase may be paid less than the minimum rate of the rate range for the employee's position.

(4)(i) Except as provided in paragraph (c)(4)(iii) of this section, the salary of an employee whose performance is rated at level 2, including an employee whose rate of basic pay is less than the minimum rate of the rate range for the employee's position, will be adjusted by multiplying the employee's rate of basic pay on the day immediately preceding the pay adjustment period by one-half of the amount of the general increase applicable to the rate range for the grade of the employee's position for such pay adjustment period.

(ii) The salary of an employee whose rate of basic pay is less than the minimum rate of the rate range of the employee's position, and whose performance is rated at level 3 or above, will be adjusted by multiplying the employee's rate of basic pay on the day immediately preceding the pay adjustment period by the full amount of the general increase applicable to the rate range of the grade of the employee's position for such pay adjustment period.

(iii) An employee who is receiving retained pay will receive one-half of the general increase, as required under 5 U.S.C. 5363(a), regardless of his or her summary rating level.

(d) Agencies will increase the salary of employees who cannot be rated under a performance appraisal system established under 5 U.S.C. 4302a by the amount of the full general pay increase.

§ 540.107 Merit increases.

(a)(1) Merit increases under 5 U.S.C. 5404 are to be effective on the first day of the first applicable pay period commencing on or after October 1 of each year. Merit increases may be paid retroactively but must be received by the employee no later than December 31 of the applicable year.

(2) An employee is eligible to receive a merit increase if he/she is in a Performance Management and Recognition System position on the effective date of the merit increase.

(b) PMRS employees whose performance is rated at level 3 (Fully Successful), or levels 4 or 5 above the "Fully Successful" level, as defined in § 430.405(h) of this chapter, shall receive merit increases in accordance with the following table.

MERIT INCREASES FOR EACH PERFORMANCE RATING LEVEL

Performance rating	Amount received if rate of basic pay is less than the reference amount	Amount received if rate of basic pay is equal to or greater than the reference amount
Level 5	1 merit increase	1 merit increase.
Level 4	1 merit increase	½ merit increase.
Level 3 (Fully Successful)	1 merit increase	⅓ merit increase.

(c) PMRS employees whose performance is rated at level 1 or 2 will receive a zero merit increase.

(d) An employee newly appointed to the Government within 90 days of the effective date (including the effective date) of the merit increase shall not be eligible for a merit increase. For the purposes of this paragraph:

(1) A reinstated employee is considered to be a newly appointed employee;

(2) An employee reemployed under Part 351, Subpart J, of this chapter, is not considered to be a newly appointed employee; and

(3) An employee receiving a new appointment without a break in service of one or more workdays is not considered to be a newly appointed employee.

(e) An employee who moves into the PMRS within 90 days of the effective date of the merit increase and who receives an increase to base pay (promotion, within-grade increase, quality step increase) within 90 days of the effective date of the merit increase, will not receive a merit increase for that fiscal year. Movements into the PMRS and increases occurring on the effective date of the merit increase are considered to be within this 90-day period. Actions covered by this rule include:

(1) Conversion to the PMRS;

(2) Reassignment to the PMRS from another Federal pay system;

(3) Promotion to the PMRS;

(4) Temporary promotion to the PMRS.

(f) When an employee's performance cannot be appraised for the agency's minimum appraisal period, merit increases will be granted in accordance with the provisions of § 540.108(a), (b), (c) or (d) of this part.

[50 FR 35499, Aug. 30, 1985; 50 FR 40179, Oct. 1, 1985]

§ 540.108 Special provisions for pay administration.

(a)(1) This paragraph applies when an employee cannot be rated for the current appraisal period under elements and standards established under 5 U.S.C. 4302a, under the following circumstances:

(i) An employee who is not under elements and standards, established under 5 U.S.C. 4302a, for the agency's minimum appraisal period, except as provided in § 540.107(d) and (e) of this part; or

(ii) An employee who is unable to be rated because the supervisor has left the agency, and higher level supervisors cannot reasonably appraise the performance of the employee; or

(iii) An employee who is on long-term training or IPA assignment under sections 3371 through 3376 of title 5, United States Code.

(2) Under these circumstances, a merit increase shall be granted using one of the following rules in the order specified:

(i) The employee's rating period may be extended as provided in § 540.104(b)(2), such extension not to exceed September 30 of the same year;

(ii) The employee's rating of record under 5 U.S.C. 4302a is extended and the appropriate increase is granted, if that rating was given no earlier than the previous agency rating period; or

(iii) The employee receives an increase equivalent to that granted for a level 3 ("Fully Successful") rating.

(b) Except as provided in paragraphs (c) and (d) of this section, when an employee who cannot be rated returns to a pay status after an approved absence that would be creditable service under 5 CFR 531.406, which included one or more pay adjustments provided under 5 U.S.C. 5403 and 5404, the employee's rate of basic pay shall be set at the sum of—

(1) The employee's rate of basic pay immediately before the interruption of his or her employment with the agency; and, as appropriate,

(2) The general pay increases that would have been required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee's service had not been interrupted; and

(3) The merit increases received by an employee rated at level 3 ("Fully Successful").

(c)(1) This paragraph applies when the employee's rate of basic pay is being set because of—

(i) Service in the armed forces or non-Government service referenced in 5 U.S.C. 5405(d);

(ii) Return to a pay status after an IPA assignment under sections 3371 through 3376 of title 5, United States Code;

(iii) Other service for which an employee's advancement through the pay range is preserved by statute; or

(iv) One or more merit increases that occurred during a period for which the employee has received credit under the back pay provisions of 5 U.S.C. 5596 and Subpart H of Part 550 of this chapter.

(2) Under these circumstances, the employee's pay shall be set at the sum of—

(i) The employee's rate of basic pay immediately before the interruption of his or her duty status, and, as appropriate;

(ii) The general increases that would be required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee's service had not been interrupted; and

(iii) Merit increases, which will be granted as follows:

(A)(1) For the first merit increase during the period of such service, the employee's rating of record under 5 U.S.C. 4302a is extended and the appropriate increase is granted, if that rating was given no earlier than the previous agency rating period; or

(2) If there is no rating of record that can be extended, the employee receives an increase equivalent to that granted for a level 3 ("Fully Successful") rating.

(B) For all subsequent merit increases, the employee will receive the increase equivalent to that received for a level 3 ("Fully Successful") rating for the period involved.

(d)(1) This paragraph applies when the employee's rate of basic pay is being set because of—

(i) Leave without pay (LWOP) for a period of time such that the employee is not in a pay status for at least the agency's minimum appraisal period; and

(ii) The employee returns to pay status between either (1) a period which is less than the agency's minimum appraisal period, or (2) after the end of the agency's appraisal period, and the effective date of the merit increase.

(2) Under these circumstances the employee's pay shall be set at the sum of—

(i) The employee's rate of basic pay immediately before the effective date of the LWOP; and, as appropriate,

(ii) The general increases that would be required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee had not been on LWOP.

(3) Under these circumstances, no merit increase will be granted for the current appraisal period for which merit increases are being granted.

(e) Notwithstanding § 531.203(f) of this chapter, when an employee is promoted within or out of the PMRS on the effective date of the general increase *and* the merit increase, the employee shall receive the following, in the order specified:

(1) Any general increase to which the employee otherwise would be entitled;

(2) Any merit increase to which the employee otherwise would be entitled; and

(3) The increase resulting from the promotion.

§ 540.109 Performance awards.

(a) Section 5406 of title 5, United States Code authorizes the payment of performance awards as part of the Performance Management and Recognition System.

(b)(1) Each agency covered by the Performance Management and Recognition System shall, at the beginning of each fiscal year, determine the amount of money available for performance awards for that fiscal year in accordance with the requirements of 5 U.S.C. 5406(c) and instructions provided by OPM. Except as provided in paragraph (b)(3) of this section, the following funding requirements apply:

(i) Each agency is required to pay a minimum of .85 percent of the estimated aggregate amount of PMRS employees' basic pay for fiscal year 1986 for performance awards;

(ii) In each of the four fiscal years thereafter, the minimum percentage to be spent for performance awards will be adjusted in accordance with OPM instructions so that for fiscal year 1989 a minimum of 1.15 percent is spent;

(iii) An agency may not spend more for performance awards than 1.5 percent of the estimated aggregate amount of PMRS employees' basic pay for any fiscal year.

(2) In determining the estimated aggregate amount of PMRS employees' basic pay for a fiscal year, consideration should be given to the following factors:

(i) The number of employees covered by the PMRS during the previous year (or the Merit Pay System in FY 84);

(ii) The aggregate rates of basic pay for such employees;

(iii) Significant changes in the number of PMRS employees expected in the current fiscal year, such as by attrition, reorganization, expansion, or reduction in force; and

(iv) The distribution of performance ratings in the agency;

(v) The amount of the general increases and merit increases that will be paid to PMRS employees in the current fiscal year.

(3) Agencies having 20 or fewer employees covered by the PMRS and

that have determined that the funding allowed under 5 U.S.C. 5406(c)(2)(A) is insufficient to provide an effective performance awards distribution, may submit to OPM, at the beginning of each fiscal year, a request for approval of a higher level of funding for performance awards, but not to exceed 10 percent of the aggregate amount of basic pay for PMRS employees in that fiscal year as provided in 5 U.S.C. 5406(c)(2)(B). The request shall be in writing and shall include the level of funding desired, and the reasons for and sufficient data to support funding at the higher level. Sufficient data will include, at a minimum:

(i) Number of employees;

(ii) Distribution of ratings;

(iii) Awards distribution methodology;

(iv) Award amounts that would be payable under paragraph (b)(1) of this section; and

(v) Award amounts that will be payable under the proposed level of funding.

(c)(1) Performance awards shall be paid at least annually in accordance with 5 U.S.C. 5406(c)(2) and OPM instructions, on a date or within a time period established by the agency, except that agencies should pay these awards as close to the end of the performance appraisal period as the agency deems practicable. This does not preclude agencies from granting cash awards under 5 U.S.C. 5407 and § 540.110 of this part at any time during the appraisal period.

(2) An employee is eligible to receive a performance award if he/she is in a Performance Management and Recognition System position on the last day of the current performance appraisal period for which performance pay decisions are being made.

(d)(1) Performance awards must be based on an employee's rating of record for the current appraisal period for which performance pay decisions are being made. An employee with a rating at level 5 must receive a performance award of at least 2 percent of base pay (except that no minimum shall be applicable in FY 85), but not more than 10 percent of base pay in any given year. Based upon an agency head's determination that an employee has performed at an unusually outstanding level, the agency may grant a performance award not to exceed 20 percent of base pay.

(2) An employee with a summary rating at level 4 should receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance award budget, any award granted to employees in the same grade rated at level 4 must be less than any award received by employees rated at level 5.

(3) An employee with a summary rating at level 3 may receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance award budget, any award granted to employees in the same grade rated at level 3 must be less than any award received by employees rated at level 4.

(e) If an agency determines the amount of performance awards using a percentage of base pay, the rate of basic pay on the last day of the performance appraisal period for which awards are being paid must be used to calculate the amount of the awards.

(f)(1) In granting performance awards as provided in paragraph (d) of this section, if an employee has been promoted within the preceding year, the agency head may take this into account in determining the amount of the employee's performance award that otherwise would have been specified in the agency's Performance Management Plan. However, any employee receiving a rating of "Outstanding" must receive an award of no less than 2 percent of base pay (except that no minimum shall be applicable in FY 85).

(2) Performance awards that have been adjusted because of recent promotions will not be considered in meeting the requirements of paragraph (d) of this section.

(g) The agency head will determine whether an employee who cannot be given a rating of record under 5 U.S.C. 4302a will be granted a performance award. If a determination is made to grant a performance award, the amount of such award will be determined in accordance with the procedure specified in § 540.108(a)(2), and the agency's Performance Management Plan.

(h) An employee newly appointed to the Government, as specified in § 540.107(d), within 90 days of the effective date (including the effective date) of the merit increase shall not be eligible for a performance award.

(i)(1) When an employee is—

(i) On leave without pay (LWOP) for a period of time such that the employee is not in a pay status for at least the agency's minimum appraisal period; and

(ii) The employee returns to pay status between either (1) a period which is less than the agency's minimum appraisal period, or (2) after the end of the agency's appraisal period, and the effective date of the merit increase;

(2) The employee will not be granted a performance award.

(j) Failure of an agency to pay a performance award under this section as authorized by 5 U.S.C. 5406(b) may not be appealed.

[50 FR 35499, Aug. 30, 1985, as amended at 50 FR 52897, Dec. 27, 1985]

§ 540.110 Cash award program.

(a) Title 5, U.S. Code, section 5407 authorizes a cash award program for:

(1) Suggestions, inventions, superior accomplishments, or other unique personal efforts which contribute to the efficiency, economy, or other improvement of Government operations, or achieve a significant reduction in paperwork; or

(2) The performance of a special act or service in the public interest in connection with or related to the employee's Federal employment.

(b) An award for any unique or special act or service under paragraph (a) of this section may be granted for any non-recurring employee or group contribution which is highly exceptional and unusually outstanding and which is beyond normal job responsibilities and performance standards.

(c) In granting cash awards under this section, the agency must prepare a written justification separate from the employee's performance plan or rating.

(d) Cash awards will be granted in accordance with the incentive award program provisions in Part 451 of this chapter, OPM instructions under that chapter, and the agency's incentive award program established under Part 451 of this chapter.

§ 540.111 Agency Performance Management Plans.

(a) Each agency with employees who are subject to the Performance Management and Recognition System shall establish a Performance Management Plan for administering 5 U.S.C. 4302a, 5 U.S.C. 5401 through 5410, and this part. Performance Management Plans shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Appraisal systems required under 5 U.S.C. 4302a.

(2) Performance Management and Recognition System plan(s) required by this part, including the manner by which the distribution of the funds contained in the agency's performance award budget will be made.

(3) Requirements for communication to the agency's PMRS employees of the purpose of the Performance Management and Recognition System and how it works; and

(4) Requirements for training in the operation of the Performance Management and Recognition System for employees who are subject to that System and for Senior Executive Service members and other managers supervising PMRS employees.

(b)(1) Each agency covered by Part 540 of this chapter shall submit a Performance Management Plan to the Office of Personnel Management for review and approval. OPM will provide agencies with a Performance Management Plan Checklist, containing all the components necessary for approval of the PMRS Performance Management Plan.

(2) If major subcomponents of an agency propose to modify any element of the agency's plan that is included in the Performance Management Plan Checklist, or develop separate pro-

posed plans based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval.

(3) Agencies will be required to implement the provisions of an approved Performance Management Plan pertaining to their Performance Management and Recognition System employees not less than 150 days prior to the end of the agency's performance appraisal period.

(c) Agencies shall submit to OPM for approval any changes to their Performance Management Plans that modify any element of the agency's Plan that is included in the Performance Management Plan Checklist.

§ 540.112 Reports.

(a) So that the Office of Personnel Management can provide the Congress and others with information regarding the operation of the Performance Management and Recognition System, including performance awards under 5 U.S.C. 5406 and cash awards under 5 U.S.C. 5407, each agency shall maintain such records and submit to OPM such reports as OPM may require.

(b) Each agency shall report to OPM at the beginning of each fiscal year the estimated performance awards budget, including the funding level used, and such other data required by OPM to administer the Performance Management and Recognition System.

PART 550—PAY ADMINISTRATION (GENERAL)

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AUTHORITY: 5 U.S.C. 5514; sec. 8(1), E.O. 11609, 3 CFR, 1971-1975 Comp., 586; redesignated in sec. 2-1, E.O. 12107, 3 CFR, 1978 Comp.

SOURCE: 33 FR 12458, Sept. 4, 1968, unless otherwise noted.

Subpart A—Premium Pay

AUTHORITY: 5 U.S.C. 5548; sec. 1(1) of E.O. 11228, 3 CFR, 1964-1965 Comp., p. 317, unless otherwise noted. §§ 550.141 to 550.164 also issued under 5 U.S.C. 5545.

GENERAL PROVISIONS

§ 550.101 Coverage and exemptions.

(a) *Employees to whom this subpart applies.* (1) This subpart applies to each employee in or under an Executive agency as defined by section 105 of title 5, United States Code, except those named in paragraph (b) of this section.

(2) The sections in this subpart incorporating special provisions for certain types of work (§§ 550.141 to 550.164, inclusive) apply also to each employee of the judicial branch, legislative branch, and the government of the District of Columbia who is subject to subchapter V of chapter 55 of title 5, United States Code.

(b) *Employees to whom this subpart does not apply.* This subpart does not apply to:

(1) An elected official;

(2) The head of a department;

(3) [Reserved]

(4) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of title 5, United States Code, or by a wage board or similar administrative authority serving the same purpose, except that § 550.113(d) is applicable to such an employee whose rate of basic pay is fixed on an annual or monthly basis;

(5) An employee outside the continental United States or in Alaska who is paid in accordance with local prevailing wage rates for the area in which employed;

(6) An employee of the Tennessee Valley Authority;

(7) An employee of the Central Intelligence Agency (sec. 10, 63 Stat. 212, as amended; 50 U.S.C. 403j);

(8) A seaman to whom section 1(a) of the act of March 24, 1943 (57 Stat. 45; 50 U.S.C. App. 1291(a)) applies;

(9) A member of the United States Park Police or the United States Secret Service Uniformed Division;

(10) An officer or member of the crew of a vessel, whose pay is fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry (30 Comp. Gen. 158);

(11) A civilian keeper of a lighthouse, or a civilian employed on a lightship or another vessel of the Coast Guard (14 U.S.C. 432(f));

(12) A physician, dentist, nurse, or any other employee in the Department of Medicine and Surgery, Veterans Administration, whose pay is fixed under chapter 73 of title 38, United States Code;

(13) A student-employee as defined by section 5351 of title 5, United States Code;

(14) An employee of the Environmental Science Services Administration engaged in the conduct of meteorological investigations in the Arctic region (62 Stat. 286; 15 U.S.C. 327);

(15) An employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;

(16) A "teacher" or an individual holding a "teaching position" as defined by section 901 of title 20, United States Code;

(17) A Foreign Service officer or a member of the Senior Foreign Service; or

(18) A member of the Senior Executive Service.

(c) *Services to which this subpart does not apply.* This subpart does not apply to overtime, night, or holiday services for which additional pay is provided by the act of:

(1) February 13, 1911, as amended (36 Stat. 899, as amended; 19 U.S.C. 261, 267), involving inspectors, storekeepers, weighers, and other customs officers and employees;

(2) July 24, 1919 (41 Stat. 241; 7 U.S.C. 394), involving employees engaged in enforcement of the Meat Inspection Act;

(3) June 17, 1930, as amended (46 Stat. 715, as amended; 19 U.S.C. 1450, 1451, 1452), involving customs officers and employees;

(4) March 2, 1931 (46 Stat. 1467; 8 U.S.C. 1353*a*), involving inspectors and employees, Immigration and Naturalization Service;

(5) May 27, 1936, as amended (49 Stat. 1380, as amended; 46 U.S.C. 382b), involving local inspectors of steam vessels and assistants, U.S. shipping commissioners, deputies, and as-

sistants, and customs officers and employees;

(6) March 23, 1941 (55 Stat. 46; 47 U.S.C. 154(f)(3)), involving certain engineers of the Federal Communications OPM;

(7) June 3, 1944 (58 Stat. 269; 19 U.S.C. 1451a), involving customs officers and employees;

(8) August 4, 1949 (63 Stat. 495; 7 U.S.C. 349a), involving employees of the Bureau of Animal Industry who work at establishments which prepare virus, serum, toxin, and analogous products for use in the treatment of domestic animals; or

(9) August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260), involving employees of the Department of Agriculture performing inspection or quarantine services relating to imports into and exports from the United States.

(5 U.S.C. 5548 and 6101(c))

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3933, Jan. 28, 1983]

§ 550.102 Entitlement.

A department (and for the purpose of §§ 550.141 to 550.164, inclusive, a legislative or judicial agency and the government of the District of Columbia) shall determine an employee's entitlement to premium pay in accordance with subchapter V of chapter 55 of title 5, United States Code, and this subpart.

§ 550.103 Definitions.

In this subpart:

(a) "Department" means an executive agency and a military department as defined by sections 105 and 102 of title 5, United States Code.

(b) "Agency" means (1) a department as defined in paragraph (a) of this section, (2) the government of the District of Columbia, and (3) a legislative or judicial agency which has positions that are subject to subchapter V of chapter 55 of title 5, United States Code.

(c) "Employee" means an employee to whom this subpart applies.

(d) "Head of a department" means the head of a department and, except for the purpose of § 550.101(b)(2), an official who has been delegated authority to act for the head of a department in the matter concerned.

(e) "Nightwork" has the meaning given that term in § 550.121, and includes any nightwork preformed by an employee as part of his or her regularly scheduled administrative workweek.

(f) "Irregular or occasional overtime work" means overtime work that is not part of an employee's regularly scheduled administrative workweek.

(g) "Regular overtime work" means overtime work that is part of an employee's regularly scheduled administrative workweek.

(h) "Overtime work" has the meaning given that term by paragraphs (a) and (d) of § 550.111, and includes irregular or occasional overtime work and regular overtime work.

(i) "Premium pay" means additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, holiday, or Sunday work, and for standby duty or administratively uncontrollable work.

(j) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

(k) "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

(l) "Administrative workweek" means a period of 7 consecutive calendar days designated in advance by the head of a department under section 6101(a) of title 5, United States Code.

(m) "Basic workweek," for full-time employees, means the 40-hour workweek established in accordance with § 610.111 of this chapter.

(n) "Regularly scheduled administrative workweek," for a full-time employee, means the period within an administrative workweek, established in accordance with § 610.111 of this chapter, within which the employee is regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

(o) "Sunday work" means nonovertime work performed by an employee during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday.

(p) "Regularly scheduled" work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111 of this chapter.

(q) "Holiday work" means nonovertime work performed by an employee during a regularly scheduled daily tour of duty on a holiday designated in accordance with § 610.202 of this chapter.

(5 U.S.C. 5548 and 6101(c))

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3933, Jan. 28, 1983]

§ 550.105 Maximum limitation.

An employee may be paid premium pay under this subpart only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15.

OVERTIME PAY

§ 550.111 Authorization of overtime pay.

(a) Except as provided by paragraph (d) of this section, overtime work means work in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is:

(1) Officially ordered or approved: and

(2) Performed by an employee. Hours of work in excess of eight in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

(b) Except as otherwise provided in this subpart, a department shall pay for overtime work at the rates provided in § 550.113.

(c) Overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated.

(d) For an employee for whom the first 40 hours of duty in an administrative workweek is his basic workweek under § 610.111(b) of this chapter, overtime work means work in excess of 40 hours in an administrative workweek that is:

(1) Officially ordered or approved, and

(2) Performed by an employee, when the employee's basic pay exceeds the minimum rate for GS-10 or when the employee is engaged in professional or technical engineering or scientific activities. For purposes of this section and section 5542(a) of title 5, United States Code, an employee is engaged in professional or technical engineering or scientific activities when he is assigned to perform the duties of a professional or support technician position in the physical, mathematical, natural, medical, or social sciences or engineering or architecture.

(e) Notwithstanding paragraphs (a) and (d) of this section, when an employee's basic workweek includes a daily tour of duty of more than 8 hours and his hourly rate of basic pay exceeds the hourly rate of overtime pay provided by § 550.113, the department shall pay him at his basic rate of pay for each hour of his daily tour of duty within his basic workweek.

[33 FR 12458, Sept. 4, 1968, as amended at 34 FR 19495, Dec. 10, 1969; 48 FR 36805, Aug. 15, 1983]

§ 550.112 Computation of overtime work.

The computation of the amount of overtime work of an employee is subject to the following conditions:

(a) *Time spent in principal activities.* Principal activities are the activities that an employee is employed to perform. They are the activities that an employee performs during his or her regularly scheduled administrative workweek (including regular overtime work) and activities performed by an employee during periods of irregular or occasional overtime work authorized under § 550.111. Overtime work in principal activities shall be credited as follows:

(1) An employee shall be compensated for every minute of regular overtime work.

(2) A quarter of an hour shall be the largest fraction of an hour used for crediting irregular or occasional over-

time work under this subpart. When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full fraction of an hour used to credit overtime work.

(b) *Time spent in preshift or postshift activities.* A preshift activity is a preparatory activity that an employee performs prior to the commencement of his or her principal activities, and a postshift activity is a concluding activity that an employee performs after the completion of his or her principal activities. Such activities are not principal activities as defined in paragraph (a) of this section.

(1) (i) If the head of a department reasonably determines that a preshift or postshift activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than 10 minutes per daily tour of duty, he or she shall credit all of the time spent in that activity, including the 10 minutes, as hours of work.

(ii) If the time spent in a preshift or postshift activity is compensable as hours of work, the head of the department shall schedule the time period for the employee to perform that activity. An employee shall be credited with the actual time spent in that activity during the time period scheduled by the head of the department. In no case shall the time credited for the performance of an activity exceed the time scheduled by the head of the department. If the time period scheduled by the head of the department for the performance of a pereshift or postshift activity is outside the employee's daily tour of duty, the employee shall be credited with the time spent performing that activity in accordance with paragraph (a)(2) of this section.

(2) A preshift or postshift activity that is not closely related to the performance of the principal activities is considered a preliminary or postliminary activity. Time spent in preliminary or postliminary activities is excluded from hours of work and is not compensable, even if it occurs between periods of activity that are compensable as hours of work.

(c) *Leave with pay.* An employee's absence from duty on authorized leave with pay under subchapter I of chapter 61 of title 5, United States Code, during the time when he would otherwise have been required to be on duty during a basic workweek (including authorized absence on a legal holiday, on a nonworkday established by Executive or administrative order, and on compensatory time off as provided in § 550.114) is deemed employment and does not reduce the amount of overtime pay to which the employee is entitled during an administrative workweek. Leave of absence with pay under subchapter I of chapter 61 of title 5, United States Code, is charged only for an absence that occurs during a basic workweek.

(d) *Leave without pay.* (1) For a period of leave without pay in an employee's basic workweek, an equal period of service performed outside the basic workweek, but in the same administrative workweek, shall be substituted and paid for at the rate applicable to his basic workweek before any remaining period of service may be paid for at the overtime rate on the basis of exceeding 40 hours in a workweek.

(2) For a period of leave without pay in an employee's daily tour of duty, an equal period of service performed outside the daily tour, but in the same workday, shall be substituted and paid for at the rate applicable to his daily tour of duty before any remaining period of service may be paid for at the overtime rate on the basis of exceeding 8 hours in a workday.

(e) *Absence during overtime periods.* Except as provided by paragraph (a) of this section, as expressly authorized by statute, or to the extent authorized while the employee is in a travel status, a period is counted as overtime work only when the employee actually performs work during the period or is taking compensatory time off as provided in § 550.114.

(f) *Night, Sunday, or holiday work.* Hours of night, Sunday, or holiday work are included in determining for overtime pay purposes the total number of hours of work in an administrative workweek.

(g) *Time in travel status.* Time in travel status away from the official duty-station of an employee is deemed employment only when:

(1) It is within his regularly scheduled administrative workweek, including regular overtime work; or

(2) The travel (i) involves the performance of actual work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under such arduous and unusual conditions that the travel is inseparable from work, or (iv) results from an event which could not be scheduled or controlled administratively.

(h) *Call-back overtime work.* Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration for the purpose of premium pay, either in money or compensatory time off.

(5 U.S.C. 5548 and 6101(c); 29 U.S.C. 204(f))

[33 FR 12458, Sept. 4, 1968, as amended at 33 FR 18669, Dec. 18, 1968; 48 FR 3934, Jan. 28, 1983; 48 FR 36805, Aug. 15, 1983]

§ 550.113 Computation of overtime pay.

(a) For each employee whose rate of basic pay does not exceed the minimum rate for GS-10 the overtime hourly rate is 1½ times his hourly rate of basic pay.

(b) For each employee whose rate of basic pay exceeds the minimum rate for GS-10 the overtime hourly rate is 1½ times the hourly rate of basic pay at the minimum rate for GS-10.

(c) An employee is paid for overtime work performed on a Sunday or a holiday at the same rate as for overtime work performed on another day.

(d) An employee whose rate of basic pay is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by a wage board or similar administrative authority serving the same purpose is entitled to overtime pay in accordance with the provisions of section 5544 of title 5, United States Code. The rate of pay for each hour of overtime work of such an employee is computed as follows:

(1) If the rate of basic pay of the employee is fixed on an annual basis, divide the rate of basic pay by 2,080 and multiply the quotient by one and one-half; and

(2) If the rate of basic pay of the employee is fixed on a monthly basis, multiply the rate of basic pay by 12 to derive an annual rate of basic pay, divide the annual rate of basic pay by 2,080 and multiply the quotient by one and one-half.

Rates are computed in full cents, counting a fraction of a cent as the next higher cent.

§ 550.114 Compensatory time off for irregular or occasional overtime work.

(a) At the request of an employee, the head of a department may grant him compensatory time off from his tour of duty instead of payment under § 550.113 for an equal amount of irregular or occasional overtime work.

(b) The head of a department may provide that an employee whose rate of basic pay exceeds the maximum rate for GS-10 shall be paid for irregular or occasional overtime work with an equivalent amount of compensatory time off from his tour of duty instead of payment under § 550.113.

(c) The head of a department may fix a time limit for an employee to request or take compensatory time off and may provide that an employee who fails to take compensatory time off to which he is entitled under paragraph (a) or (b) of this section before the time limit fixed, shall lose his right both to compensatory time off and to overtime pay unless his failure is due to an exigency of the service beyond his control.

NIGHT PAY

§ 550.121 Authorization of night pay differential.

(a) Except as provided by paragraph (b) of this section, nightwork is regularly scheduled work performed by an employee between the hours of 6 p.m. and 6 a.m. Subject to § 550.122, and except as otherwise provided in this subpart, an employee who performs nightwork is entitled to pay for that work at his or her rate of basic pay plus a night pay differential amounting to 10 percent of his or her rate of basic pay.

(b) The head of a department may designate a time after 6 p.m. and a time before 6 a.m. as the beginning and end, respectively, of nightwork for the purpose of paragraph (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by paragraph (a) of this section. Times so designated as the beginning or end of nightwork shall correspond reasonably with the end or beginning, respectively, of the customary hours of business in the locality.

(5 U.S.C. 5548 and 6101(c))

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983]

§ 550.122 Computation of night pay differential.

(a) *Absence on holidays or in travel status.* An employee is entitled to a night pay differential for a period when he is excused from nightwork on a holiday or other nonworkday and for night hours of his tour of duty while he is in an official travel status, whether performing actual duty or not.

(b) *Absence on leave.* An employee is entitled to a night pay differential for a period of paid leave only when the total amount of that leave in a pay period, including both night and day hours, is less than 8 hours.

(c) *Relation to overtime, Sunday, and holiday pay.* Night pay differential is in addition to overtime, Sunday, or holiday pay payable under this subpart and it is not included in the rate of basic pay used to compute the overtime, Sunday, or holiday pay.

(d) *Temporary assignment to a different daily tour of duty.* An employee is entitled to a night pay differential when he or she is temporarily assigned during the administrative workweek to a daily tour of duty that includes nightwork. This temporary change in a daily tour of duty within the employee's regularly scheduled administrative workweek is distinguished from a period of irregular or occasional overtime work in addition to the employee's regularly scheduled administrative workweek.

(5 U.S.C. 5548 and 6101(c))

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983]

PAY FOR HOLIDAY WORK

§ 550.131 Authorization of pay for holiday work.

(a) Except as otherwise provided in this subpart, an employee who performs holiday work is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to his or her rate of basic pay for that holiday work that is not in excess of 8 hours.

(b) An employee is entitled to pay for overtime work on a holiday at the same rate as for overtime work on other days.

(c) An employee who is assigned to duty on a holiday is entitled to pay for at least 2 hours of holiday work.

(5 U.S.C. 5548 and 6101(c))

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983]

§ 550.132 Relation to overtime, night, and Sunday pay.

(a) Premium pay for holiday work is in addition to overtime pay or night pay differential, or premium pay for Sunday work payable under this subpart and is not included in the rate of basic pay used to compute the overtime pay or night pay differential or premium pay for Sunday work.

(b) Notwithstanding premium pay for holiday work, the number of hours of holiday work are included in determining for overtime pay purposes the total number of hours of work performed in the administrative workweek in which the holiday occurs.

(c) The number of regularly scheduled hours of duty on a holiday that fall within an employee's basic workweek on which the employee is excused from duty are part of the basic workweek for overtime pay computation purposes.

REGULARLY SCHEDULED STANDBY DUTY PAY

§ 550.141 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of the premium pay prescribed in this subpart for regularly scheduled overtime, night, holiday, and Sunday work, to an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Premium pay under this section is determined as an appropriate percentage, not in excess of 25 percent, of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10.

§ 550.142 General restrictions.

An agency may pay premium pay under § 550.141 only if that premium pay, over a period appropriate to reflect the full cycle of the employee's duties and the full range of conditions in his position, would be:

(a) More than the premium pay which would otherwise be payable under this subpart for the hours of actual work customarily required in his position, excluding standby time during which he performs no work; and

(b) Less than the premium pay which would otherwise be payable under this subpart for the hours of duty required in his position, including standby time during which he performs no work.

§ 550.143 Bases for determining positions for which premium pay under § 550.141 is authorized.

(a) The requirement for the type of position referred to in § 550.141 that an employee regularly remain at, or within the confines of, his station must meet all the following conditions:

(1) The requirement must be definite and the employee must be officially ordered to remain at his station. The employee's remaining at his station must not be merely voluntary, desirable, or a result of geographic isolation, or solely because the employee lives on the grounds.

(2) The hours during which the requirement is operative must be included in the employee's tour of duty. This tour of duty must be established on a regularly recurring basis over a substantial period of time, generally at least a few months. The requirement must not be occasional, irregular, or for a brief period.

(3) The requirement must be associated with the regularly assigned duties of the employee's job, either as a continuation of his regular work which includes standby time, or as a requirement to stand by at his post to perform his regularly assigned duties if the necessity arises.

(b) The words "at, or within the confines, of his station", in § 550.141 mean one of the following:

(1) At an employee's regular duty station.

(2) In quarters provided by an agency, which are not the employee's ordinary living quarters, and which are specifically provided for use of personnel required to stand by in readiness to perform actual work when the need arises or when called.

(3) In an employee's living quarters, when designated by the agency as his duty station and when his whereabouts is narrowly limited and his activities are substantially restricted. This condition exists only during periods when an employee is required to remain at his quarters and is required to hold himself in a state of readiness to answer calls for his services. This limitation on an employee's whereabouts and activities is distinguished from the limitation placed on an employee who is subject to call outside his tour of duty but may leave his quarters provided he arranges for someone else to respond to calls or leaves a telephone number by which he can be reached should his services be required.

(c) The words "longer than ordinary periods of duty" in § 550.141 mean more than 40 hours a week.

(d) The words "a substantial part of which consists of remaining in a standby status rather than performing work" in § 550.141 refer to the entire tour of duty. This requirement is met:

(1) When a substantial part of the entire tour of duty, at least 25 percent, is spent in a standby status which occurs throughout the entire tour;

(2) If certain hours of the tour of duty are regularly devoted to actual work and others are spent in a standby status, that part of the tour of duty devoted to standing by is at least 25 percent of the entire tour of duty; or

(3) When an employee has a basic workweek requiring full-time performance of actual work and is required, in addition, to perform standby duty on certain nights, or to perform standby duty on certain days not included in his basic workweek.

(e) An employee is in a standby status, as referred to in § 550.141, only at times when he is not required to perform actual work and is free to eat, sleep, read, listen to the radio, or engage in other similar pursuits. An employee is performing actual work, rather than being in a standby status, when his full attention is devoted to his work, even though the nature of his work does not require constant activity (for example, a guard on duty at his post and a technician continuously observing instruments are engaged in the actual work of their positions). Actual work includes both work performed during regular work periods and work performed when called out during periods ordinarily spent in a standby status.

§ 550.144 Rates of premium pay payable under § 550.141.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.141, to an employee who meets the requirements of that section, at one of the following percentages of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10:

(1) A position with a tour of duty of the 24 hours on duty, 24 hours off duty type and with a schedule of: 60 hours a week—5 percent, unless 25 or more hours of actual work is customarily required, in which event—10 percent; 72 hours a week—15 percent, unless 24 or more hours of actual work is customarily required, in which event—20 percent; 84 hours or more a week—25 percent.

(2) A position with a tour of duty requiring the employee to remain on duty during all daylight hours each day, or for 12 hours each day, or for 24 hours each day, with the employee living at his station during the period of his assignment to his tour, and with a schedule of: 5 days a week—5 percent, unless 25 or more hours of actual work is customarily required, in which event—10 percent; 6 days a week—15 percent, unless 30 or more hours of actual work is customarily required, in which event 20 percent; 7 days a week—25 percent.

(3) A position in which the employee has a basic workweek requiring full-time performance of actual work, and is required, in addition, to remain on standby duty: 14 to 18 hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—15 percent; 19 to 27 hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—20 percent; 28 or more hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—25 percent; 7 to 9 hours on one or more of his regular weekly nonworkdays—15 percent; 10 to 13 hours on one or more of his regular weekly nonworkdays—20 percent; 14 or more hours on one or more of his regular weekly nonworkdays—25 percent.

(4) When an agency pays an employee one of the rates authorized by paragraph (a)(1), (2), or (3) of this section, the agency shall increase this rate by adding (i) 2½ percent to the rate when the employee is required to perform Sunday work on an average of 20 to 40 Sundays over a year's period or (ii) 5 percent to the rate when the employee is required to perform Sunday work on an average of 41 or more Sundays over a year's period but the rate thus increased may not exceed 25 percent.

(b) If an employee is eligible for premium pay on an annual basis under § 550.141, but none of the percentages in paragraph (a) of this section is applicable, or unusual conditions are present which seem to make the applicable rate unsuitable, the agency may propose a rate of premium pay on an annual basis for OPM approval. The proposal shall include full information bearing on the employee's tour of duty; the number of hours of actual work required; and how it is distributed over the tour of duty; the number of hours in a standby status required and the extent to which the employee's whereabouts and activities are restricted during standby periods; the extent to which the assignment is made more onerous by night, holiday, or Sunday duty or by hours of duty beyond 8 in a day or 40 in a week; and any other pertinent conditions.

ADMINISTRATIVELY UNCONTROLLABLE WORK

§ 550.151 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other premium pay prescribed in this subpart except premium pay for regular overtime work, and work at night, on Sundays, and on holidays, to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10.

[35 FR 6311, Apr. 18, 1970]

§ 550.152 General restrictions.

An agency may pay premium pay under § 550.151 only if that premium pay, over a period appropriate to reflect the full cycle of the employee's duties and the full range of conditions in his position, would be less than the premium pay which would otherwise be payable under this subpart for the hours of duty required in his position, exclusive of regular overtime work.

§ 550.153 Bases for determining positions for which premium pay under § 550.151 is authorized.

(a) The requirement in § 550.151 that a position be one in which the hours of duty cannot be controlled administratively is inherent in the nature of such a position. A typical example of a position which meets this requirement is that of an investigator of criminal activities whose hours of duty are governed by what criminals do and when they do it. He is often required to perform such duties as shadowing suspects, working incognito among those under suspicion, searching for evidence, meeting informers, making arrests, and interviewing persons having knowledge of criminal or alleged criminal activities. His hours on duty and place of work depend on the behavior of the criminals or suspected criminals and cannot be controlled administratively. In such a situation, the hours of duty cannot be controlled by such administrative devices as hiring additional personnel; rescheduling the hours of duty (which can be done when, for example, a type of work occurs primarily at certain times of the day); or granting compensatory time off duty to offset overtime hours required.

(b) In order to satisfactorily discharge the duties of a position referred to in § 550.151, an employee is required to perform substantial amounts of irregular or occasional overtime work. In regard to this requirement:

(1) A substantial amount of irregular or occasional overtime work means an average of at least 3 hours a week of that overtime work.

(2) The irregular or occasional overtime work is a continual requirement, generally averaging more than once a week.

(3) There must be a definite basis for anticipating that the irregular or occasional overtime work will continue over an appropriate period with a duration and frequency sufficient to meet the minimum requirements under paragraphs (b)(1) and (2) of this section.

(c) The words in § 550.151 that an employee is generally "responsible for recognizing, without supervision, circumstances which require him to remain on duty" mean that:

(1) The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position.

(2) The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.

(3) The requirement that the employee is responsible for recognizing circumstances does not include such clear-cut instances as, for example, when an employee must continue working because a relief fails to report as scheduled.

(d) The words "circumstances which require him to remain on duty" as used in § 550.151 mean that:

(1) The employee is required to continue on duty in continuation of a full daily tour of duty or that after the end of his regular workday, the employee resumes duty in accordance with a prearranged plan or an awaited event. Performance of only call-back overtime work referred to in § 550.112(f) does not meet this requirement.

(2) The employee has no choice as to when or where he may perform the work when he remains on duty in continuation of a full daily tour of duty. This differs from a situation in which an employee has the option of taking work home or doing it at the office; or doing it in continuation of his regular hours of duty or later in the evening. It also differs from a situation in which an employee has such latitude in his working hours, as when in a travel status, that he may decide to begin work later in the morning and continue working later at night to better accomplish a given objective.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970]

§ 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10:

(1) A position which requires an average of at least 3 but not more than 5 hours a week of irregular or occasional overtime work—10 percent;

(2) A position which requires an average of over five but not more than 7 hours a week of irregular or occasional overtime work—15 percent;

(3) A position which requires an average of over seven but not more than 9 hours a week or irregular or occasional overtime work—20 percent;

(4) A position which requires an average of over 9 hours a week of irregular or occasional overtime work—25 percent.

(b) If an agency proposes to pay an employee premium pay on an annual basis under § 550.151 but unusual conditions seem to make the applicable rate in paragraph (a) of this section unsuitable, the agency may propose a rate of premium pay on an annual basis for OPM approval. The proposal shall include full information bearing on the frequency and duration of the irregular or occasional overtime work required; the nature of the work which prevents hours of duty from being controlled administratively; the necessity for the employee being generally responsible for recognizing, without supervision, circumstances which require him to remain on duty; and any other pertinent conditions.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970]

GENERAL RULES GOVERNING PAYMENTS OF PREMIUM PAY ON AN ANNUAL BASIS

§ 550.161 Responsibilities of the agencies.

The head of each agency, or an official who has been delegated authority to act for the head of an agency in the matter concerned, is responsible for:

(a) Fixing tours of duty; ordering employees to remain at their stations in a standby status; and placing responsibility on employees for remaining on duty when required by circumstances.

(b) Determining, in accordance with section 5545(c) of title 5, United States Code, and this subpart, which employees shall receive premium pay on an annual basis under § 550.141 or § 550.151. These determinations may not be retroactive.

(c) Determining the number of hours of actual work to be customarily required in positions involving longer than ordinary periods of duty, a substantial part of which consists of standby duty. This determination shall be based on consideration of the time required by regular, repetitive operations, available records of the time required in the past by other activities, and any other information bearing on the number of hours of actual work which may reasonably be expected to be required in the future.

(d) Determining the number of hours of irregular or occasional overtime work to be customarily required in positions which require substantial amounts of irregular or occasional overtime work with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. This determination shall be based on consideration of available records of the hours of irregular or occasional overtime work required in the past, and any other information bearing on the number of hours of duty which may reasonably be expected to be required in the future.

(e) Determining the rate of premium pay fixed by OPM under § 550.144 or § 550.154 which is applicable to each employee paid under § 550.141 or § 550.151; or, if no rate fixed under § 550.144 or § 550.154 is considered applicable, proposing a rate of premium pay on an annual basis to OPM.

(f) Reviewing determinations under paragraphs (b), (c), (d) and (e) of this section at appropriate intervals, and discontinuing payments or revising rates of premium pay on an annual basis in each instance when that action is necessary to meet the requirements of section 5545(c) of title 5, United States Code, and this subpart.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970]

§ 550.162 Payment provisions.

(a) Except as otherwise provided in this section, an employee's premium pay on an annual basis under § 550.141 or § 550.151 begins on the date that he enters on duty in the position concerned for purposes of basic pay, and ceases on the date that he ceases to be paid basic pay in the position.

(b) When an employee is in a position in which conditions warranting premium pay on an annual basis under § 550.141 or § 550.151 exist only during a certain period of the year, such as during a given season, an agency may pay the employee premium pay on an annual basis only during the period he is subject to these conditions.

(c) An agency may continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151:

(1) For a period of not more than 10 consecutive prescribed workdays on temporary assignment to other duties in which conditions do not warrant payment of premium pay on an annual basis, and for a total of not more than 30 workdays in a calendar year while on such a temporary assignment.

(2) For an aggregate period of not more than 60 prescribed workdays on temporary assignment to a formally approved program for advanced training duty directly related to duties for which premium pay on an annual basis is payable.

An agency may not continue to pay an employee premium pay on an annual basis under this paragraph for more than 60 workdays in a calendar year.

(d) When an employee is not entitled to premium pay on an annual basis under § 550.141, he is entitled to be paid for overtime, night, holiday, and Sunday work in accordance with other sections of this subpart.

(e) An agency shall continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151 while he is on leave with pay during a period in which premium pay on an annual basis is payable under paragraphs (a), (b), and (c) of this section.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6312, Apr. 18, 1970]

§ 550.163 Relationship to other payments.

(a) An employee receiving premium pay on an annual basis under § 550.141 may not receive premium pay for regular overtime work or work at night or on a holiday or on Sunday under any other section of this subpart. An agency shall pay the employee in accordance with §§ 550.113 and 550.114 for irregular or occasional overtime work.

(b) An employee receiving premium pay on an annual basis under § 550.151 may not receive premium pay for irregular or occasional overtime work under any other section of this subpart. An agency shall pay the employee in accordance with other sections of this subpart for regular overtime work, and work at night, on Sundays, and on holidays.

(c) Overtime, night, holiday, or Sunday work paid under any statute other than subchapter V of chapter 55 of title 5, United States Code, is not a basis for payment of premium pay on an annual basis under § 550.141 or § 550.151.

(d) (1) Except as provided in paragraph (d)(2) of this section, premium pay on an annual basis under § 550.141 or § 550.151 is not base pay and is not included in the base used in computing foreign and nonforeign allowances and differentials, or any other benefits or deductions that are computed on base pay alone.

(2) Premium pay on an annual basis under § 550.141 is base pay for the purpose of section 5595(c), section 8114(e), section 8331(3), and section 8704(c) of title 5, United States Code.

[33 FR 12458, Sept. 4, 1968, as amended at 33 FR 19897, Dec. 28, 1968; 35 FR 6312, Apr. 18, 1970]

§ 550.164 Construction and computation of existing aggregate rates.

(a) Pursuant to section 208(b) of the act of September 1, 1954 (68 Stat. 1111), nothing in this subpart relating to the payment of premium pay on an annual basis may be construed to decrease the existing aggregate rate of pay of an employee on the rolls of an agency immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him by administrative action.

(b) When it is necessary to determine an employee's existing aggregate rate of pay (referred to in this section as existing aggregate rate), an agency shall determine it on the basis of the earnings the employee would have received over an appropriate period (generally 1 year) if his tour of duty immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him had remained the same. In making this determination, basic pay and premium pay for overtime, night, holiday, and Sunday work are included in the earnings the employee would have received. Premium pay for irregular or occasional overtime work may be included only if it was of a significant amount in the past and the conditions which required it are expected to continue.

(c) An agency shall recompute an employee's rate of pay based on premium pay on an annual basis when he received subsequent increases in his rate of basic pay in order to determine whether or not the employee should continue to receive an existing aggregate rate or be paid premium pay on an annual basis.

(d) Except as otherwise provided by statute, an agency may not use subsequent increases in an employee's rate of basic pay to redetermine or increase the employee's existing aggregate rate. However, these increases shall be used for other pay purposes, such as the computation of retirement deductions and annuities, payment of overseas allowances and post differentials, and determination of the highest previous rate under Part 531 of this chapter.

(e) When an agency elects to pay an employee premium pay on an annual basis, he is entitled to continue to receive hourly premium pay properly payable under sections 5542, 5543, 5545 (a) and (b), and 5546 of title 5, United States Code, until his base pay plus premium pay on an annual basis equals or exceeds his existing aggregate rate. When this occurs, the agency shall pay the employee his base pay plus premium pay on an annual basis.

(f) Except when terminated under paragraph (e) of this section, an agency shall continue to pay an employee an existing aggregate rate so long as:

(1) He remains in a position to which § 550.141, § 550.151, or § 550.162(c) is applicable;

(2) His tour of duty does not decrease in length; and

(3) He continues to perform equivalent night, holiday, and irregular or occasional overtime work.

(g) If an employee who is entitled to an existing aggregate rate moves from one position to another in the same agency, both of which are within the scope of section 5545(c) of title 5, United States Code, he is entitled to be paid an existing aggregate rate in the new position such as he would have received had he occupied that position when the agency elected to make section 5545(c) applicable to it.

PAY FOR SUNDAY WORK

§ 550.171 Authorization of pay for Sunday work.

An employee is entitled to pay at his rate of basic pay plus premium pay at a rate equal to 25 percent of his rate of basic pay for each hour of Sunday work which is not overtime work and which is not in excess of 8 hours for each regularly scheduled tour of duty which begins or ends on Sunday.

[34 FR 19495, Dec. 10, 1969]

§ 550.172 Relation to overtime, night, and holiday pay.

Premium pay for Sunday work is in addition to premium pay for holiday work, overtime pay, or night pay differential payable under this subpart and is not included in the rate of basic pay used to compute the pay for holiday work, overtime pay, or night pay differential.

Subpart B—[Reserved]

Subpart C—Allotments and Assignments From Federal Employees

AUTHORITY: 5 U.S.C. 5527, E.O. 10982, 3 CFR 1959-1963 Comp., p. 502.

SOURCE: 46 FR 2325, Jan. 9, 1981, unless otherwise noted.

DEFINITIONS

§ 550.301 Definitions.

In this subpart:

"Agency" means an Executive agency as defined by section 105 of Title 5, United States Code.

"Allotment" means a recurring specified deduction for a legal purpose from pay authorized by an employee to be paid to an allottee.

"Allottee" means the person or institution to whom an allotment is made payable.

"Allotter" means the employee from whose pay an allotment is made.

"Association of management officials and/or supervisors" means an association composed of either management officials and/or supervisors with which the agency has established official relationships.

"Combined Federal Campaign" means an organization of voluntary health and welfare agencies authorized to solicit charitable contributions in a local area in accordance with arrangements prescribed by the Director of the Office of Personnel Management under Executive Order 10927.

"Continental United States" means the several States and the District of Columbia, but excluding Alaska and Hawaii.

"Dues" means the regular periodic amount specified by an allotter to be withheld from his or her pay which is required to maintain the allotter as a member in good standing in a labor organization or association of management officials and/or supervisors or other organization.

"Employee" means an employee of an agency, unless otherwise provided.

"Foreign affairs agency" means the Department of State, the International Communications Agency, the Agency for International Development and its successor agency or agencies.

"Labor organization" means a labor organization as defined by section 7103(a)(4) of Title 5, United States Code, unless specified otherwise.

"Pay" means the net pay due an employee after all deductions authorized by law (such as retirement or social security deductions, Federal withholding tax, and others, when applicable) have been made.

General Provisions

§ 550.311 Authority of agency.

(a) An agency shall permit an employee to make:

(1) An allotment for dues to a labor organization under section 7115 of Title 5, United States Code;

(2) An allotment for dues to an association of management officials and/or supervisors under § 550.331;

(3) An allotment for charitable contributions to a Combined Federal Campaign under §§ 550.341 and 550.342;

(4) An allotment for income tax withholding under § 550.351;

(5) Up to two allotments for savings under Department of Treasury regulations as codified at Part 209 of Title 31, Code of Federal Regulations;

(6) An allotment for savings for an employee assigned to a post of duty outside the continental United States under § 550.361;

(7) An allotment for child support and/or alimony payments under § 550.371.

(b) In addition to those allotments provided for in paragraph (b) of this section, an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency.

(c) The head of an agency may prescribe such additional regulations governing allotments as appropriate which are consistent with subchapter III of chapter 55 of Title 5, United States Code, and this subpart. Discretionary allotments under this subpart may be limited in number as determined appropriate by the head of the agency.

§ 550.312 General limitations.

(a) The allotter shall specifically designate the allottee and the amount of the allotment in writing in an allotment authorization.

(b) The total amount of allotments may not exceed the pay due the allotter for a particular period.

(c) An employee shall request in writing a change in or the revocation of an allotment.

(d) Allotters shall agree that the agency shall be held harmless for any authorized allotment disbursed by the agency in accordance with the employee's request for an allotment from pay.

(e) Allotters shall agree that disputes regarding any authorized allotment shall be a matter between the allotter and the allottee.

Labor Organization

§ 550.321 Authority.

Section 7115. Title 5, United States Code, authorizes an employee to make an allotment for dues to a labor organization as defined in subchapter 1 of chapter 71 of Title 5, United States Code. Such an allotment shall be effected in accordance with such rules and regulations as may be prescribed by the Federal Labor Relations Authority.

§ 550.322 Saving provision.

An agency shall permit a supervisor who so desires, to continue an allotment of dues to a labor organization as defined by section 2(e) of Executive Order 11491, as amended, which was permissible when the supervisor was excluded from a formal or exclusive unit by reason of the requirements of former section 24(d) of this Order.

Association of Management Officials and/or Supervisors

§ 550.331 Scope.

An agency shall permit an employee to make an allotment for dues to an association of management officials and/or supervisors when the employee is a supervisor or management official, and the employee is a member of an association of management officials and/or supervisors with which the agency has agreed in writing to deduct allotments for the payment of dues to the association.

Combined Federal Campaign

§ 550.341 Scope.

An agency shall permit an employee to make an allotment for charitable contributions to a Combined Federal Campaign. Allotments for contributions to the Department of Defense Overseas Combined Federal Campaign shall be permitted in accordance with a special agreement between the Office of Personnel Management and the Department of Defense which may contain any necessary exceptions to these regulations.

§ 550.342 Limitation of allotment.

(a) An agency shall permit an employee to make an allotment for a charitable contribution to a Combined Federal Campaign only when the employee is employed in an area in which a Combined Federal Campaign authorized by the Office of Personnel Management is established.

(b) An allotment to a Combined Federal Campaign shall be:

(1) For a term of 1 year beginning with the first pay period which begins in January and ending with the last pay period which begins in December, and

(2) An equal amount deducted each pay period. Minimum deductions will be established by agreement between OPM and officials of the Combined Federal Campaign.

(c) The allotter may not change the amount deducted each pay period during the term of an allotment to a Combined Federal Campaign. The allotter shall be informed of this restriction before the allotment is requested.

(d) The allotter may voluntarily discontinue the allotment at any time, but a discontinued allotment may not be reinstated.

INCOME TAX WITHHOLDING

§ 550.351 Scope.

When an employee has a legal obligation to pay, but the agency has no legal obligation to withhold, State, District of Columbia, or local income or employment taxes, an agency shall permit an employee to make an allotment for payment of the taxes.

ALLOTMENTS FOR SAVINGS

§ 550.361 Scope.

An agency shall permit an employee within the continental United States to make up to two allotments of pay to a financial organization of his/her choice, for credit to his/her savings account as authorized under Department of Treasury regulations codified at Part 209 of Title 31, Code of Federal Regulations. Additional allotments to savings for these employees will not be permitted under this part.

An employee assigned to a post of duty outside the continental United States who is not covered under Department of Treasury regulations at 31 CFR Part 209 shall be permitted to make allotments of pay to a financial organization of his/her choice for credit to his/her savings account.

ALIMONY AND/OR CHILD SUPPORT

§ 550.371 Scope.

An agency shall permit an employee to make an allotment for alimony and/or child support when he or she voluntarily elects to do so. However, this provision does not apply to garnishment orders issued to enforce child support and/or alimony obligations which are codified at Part 581 of this title.

FOREIGN AFFAIRS AGENCY ORGANIZATIONS

§ 550.381 Scope.

If an agency permits an employee to make an allotment for dues to a foreign affairs agency organization, the agency must also provide, in accordance with Section 15 of Executive Order 11636:

(a) that the employee be allowed to revoke the authorization at least every six months; and

(b) that the allotment terminates when the dues withholding agreement between a foreign affairs agency and the organization is terminated or ceases to be applicable to the employee.

Subpart D—Payments During Evacuation

AUTHORITY: 5 U.S.C. 5527; E.O. 10982, 3 CFR, 1959-1963 Comp., p. 502.

§ 550.401 Purpose.

The purpose of this subpart is to provide the authority necessary for an agency to administer Subchapter III (except section 5525) of chapter 55 of title 5, United States Code, by establishing an efficient, orderly, and equitable procedure for the payment of pay, allowances, and differentials in the event of an emergency evacuation of employees or their dependents, or both, from or within United States areas for military reasons or because of imminent danger to their lives.

§ 550.402 Applicability.

This subpart applies to agencies which exercise the authority under subchapter III of chapter 55 of title 5, United States Code, and Executive order to provide for payments for their employees who are located in United States areas.

§ 550.403 Employee coverage.

This subpart applies to:

(a) Employees of an agency who are U.S. citizens or who are U.S. nationals;

(b) Employees of an agency who are not citizens or nationals of the United States but who were recruited with a transportation agreement which provides return transportation to the area from which recruited; and

(c) Alien employees of an agency hired within the United States.

§ 550.404 Definitions.

In this subpart:

(a) "Agency" means an Executive agency as defined by section 105 of title 5, United States Code.

(b) "Employee" means an employee of an agency.

(c) "Executive order" means Executive Order No. 10982 issued December 25, 1961.

(d) "United States area" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and any territory or possession of the United States, but excluding the Trust Territory of the Pacific Islands.

§ 550.405 Limitations.

An agency may not provide an authority in its regulations to make payments under subchapter III of chapter 55 of title 5, United States Code, and this subpart when evacuations are occasioned by a natural disaster within the 48 contiguous States or the District of Columbia.

§ 550.406 Approval of agency regulations.

(a) *Advance approval.* OPM has prescribed, and published in the Federal Personnel Manual, agency regulations for adoption by an agency as the regulations authorized by section 5527(c) of title 5, United States Code, to be issued by the head of an agency to carry out sections 5522 and 5523 of that title. When the head of an agency proposes to exercise the authority given him under sections 5522 and 5523, he may adopt these agency regulations for use in United States areas; or for use in specifically designated localities within these areas. When the agency regulations are adopted without change as published in the Federal Personnel Manual, regulations so adopted have the prior approval of OPM as required by section 4(b) of the Executive order. If an agency adopts the agency regulations, it shall notify OPM of the date of adoption and of the areas in which the agency regulations will be applied.

(b) *Request for prior approval.* When an agency proposes to issue regulations which deviate from the agency regulations published in the Federal Personnel Manual, prior approval as required by section 4(b) of the Executive order must be secured from OPM before the regulations may be made effective.

(c) *Revision of agency regulations.* When OPM revises the agency regulations provided for in paragraph (a) of this section, agencies which have previously adopted those agency regulations shall adopt the revisions or within 30 days request approval from OPM to retain the regulations without change.

(d) *Supplemental regulations.* When an agency has regulations which have been approved under paragraph (a) or (b) of this section, the agency may issue any supplemental regulations or instructions, not inconsistent with its approved regulations, deemed necessary for internal operations.

§ 550.407 Payment to employees of other agencies.

OPM shall publish in the Federal Personnel Manual a list containing the name of each agency which has approved agency regulations and the areas to which the approved agency regulations apply. When this information is published in the Federal Personnel Manual, any agency (whether or not it has approved agency regulations) may make payments in an evacuation situation to an employee (and his dependents and designated representative) of an agency which has approved agency regulations who is assigned to a post of duty within the areas covered by the approved agency regulations. When a payment is made under this subpart by other than the employee's agency, the agency making the payment shall immediately report the amount and date of the payment to the employee's agency in order that prompt reimbursement may be made.

Subpart E—Pay From More Than One Position

AUTHORITY: 5 U.S.C. 5533, unless otherwise noted.

§ 550.501 Scope.

(a) *Applicability.* (1) This subpart and section 5533 of title 5, United States Code, apply in determining an employee's entitlement to receive pay from more than one position.

(2) This subpart and section 5533(a) of title 5, United States Code, apply only to an employee holding more than one position when the aggregate number of hours worked during a week exceeds 40.

(b) *Coverage.* This subpart and section 5533(a) of title 5, United States Code, apply to each department and agency (including each corporation owned or controlled by the Government of the United States and including nonappropriated fund instrumentalities under the jurisdiction of the armed forces) in the legislative (except as provided in section 5533(c) of that title), judicial, and executive branches of the Government of the United States and to the government of the District of Columbia.

§ 550.502 Definitions.

In this subpart:

(a) "Employee" means a person holding a position.

(b) "Pay" means pay paid for services in a position but excludes fees paid on other than a time basis.

(c) "Position" has the meaning given that term by section 5531 of title 5, United States Code.

(d) "Week" means the period of 7 calendar days from Sunday through Saturday.

§ 550.503 Exceptions in emergencies.

Section 5533(a) of title 5, United States Code, does not apply to pay from a position for services performed under emergency conditions relating to health, safety, protection of life or property, or national emergency.

§ 550.504 Other exceptions.

(a) When a department, agency, or the government of the District of Columbia encounters difficulty in obtaining employees to perform required personal services because of section 5533(a) of title 5, United States Code, it may make an exception from that section upon determining that the required services cannot be readily obtained otherwise. The exception shall specify the position(s) to which it applies.

(b) The Office of Personnel Management will publish in the Federal Personnel Manual exceptions of general application.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54694, Sept. 21, 1979]

§ 550.505 Report to OPM.

OPM may require a department, agency, or the government of the District of Columbia to submit a periodic report on its use of the exceptions from section 5533(a) of title 5, United States Code.

[33 FR 12458, Sept. 4, 1968. Redesignated at 37 FR 22717, Oct. 21, 1972]

Subpart F—Reduction-in-Retired-Pay Provisions of the Dual Pay Statute

AUTHORITY: 5 U.S.C. 5532, unless otherwise noted.

§ 550.601 Scope.

(a) *Applicability.* This subpart and section 5532 of title 5, United States Code, apply in determining the entitlement to retired or retainer pay of a member or former member of a uniformed service when employed in a position.

(b) *Coverage.* This subpart and section 5532 of title 5, United States Code, apply to each department and agency (including each corporation owned or controlled by the Government of the United States and including nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces) in the legislative, judicial, and executive branches of the Government of the United States and to the government of the District of Columbia.

[44 FR 44814, July 31, 1979]

§ 550.602 Definitions.

In this subpart: (a) "Member", "position", and "retired or retainer pay" have the meanings given those terms by section 5531 of title 5, United States Code.

(b) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

(c) "Officer" means commissioned or warrant officer.

[44 FR 44814, July 31, 1979]

§ 550.603 Exceptions to reduction in retired or retainer pay.

(a) Under conditions set forth in the Federal Personnel Manual, an agency may make exception to the restrictions in 5 U.S.C. 5532(b), without regard to the provisions of 5 U.S.C. 5532 (c) and (e), when the exception is warranted because of special or emergency employment needs which otherwise cannot be readily met. Such exceptions shall apply while the individual for whom the exception was granted continues to serve in the same position. This section applies only to:

(1) Any retired officer of a regular component of the uniformed services who was receiving retired pay on or before January 11, 1979;

(2) Any individual employed in a position on October 13, 1978, so long as the individual continues to hold any such position (disregarding any break in service of 3 days or less) if the individual, on that date, would have been entitled to retired or retainer pay but for the fact that the individual did not satisfy any applicable age requirement.

(b) Except as otherwise provided in paragraph (a) of this section, the Office may, during the period until January 11, 1984, authorize exceptions to the restrictions in 5 U.S.C. 5532 (a), (b), and (c) only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met. Such exception granted by the Office with respect to any individual shall terminate upon a break in service of 3 days or more.

(5 U.S.C. 5532) (Pub. L. 95-454 (5 U.S.C. 1101 Note))

[44 FR 54694, Sept. 21, 1979]

§ 550.604 Administrative responsibilities.

(a) *Uniformed services pay centers.* Uniformed services pay centers are responsible for determining the amount of military retired or retainer pay to be withheld.

(b) *Employing agencies.* Federal agencies are responsible for notifying the appropriate uniformed service pay center concerning the Federal civilian pay of retired members according to instructions provided in the Federal Personnel Manual.

[44 FR 44815, July 31, 1979]

Subpart G—Severance Pay

AUTHORITY: 5 U.S.C. 5595; E.O. 11257, 3 CFR 1964-1965 Comp., p. 357, unless otherwise noted.

§ 550.701 Coverage.

(a) *Agencies.* This subpart applies to (1) an Executive agency as defined by section 105 of title 5, United States Code; (2) the Library of Congress; (3) the Government Printing Office; and

(4) the government of the District of Columbia.

(b) *Employees.* (1) Except as provided by this paragraph and section 5595(a)(2) of title 5, United States Code, this subpart applies to each full-time and part-time employee of an agency, with a regularly prescheduled tour of duty within each administrative workweek, to each seasonal employee with a regularly prescheduled tour of duty within each administrative workweek during the season for which he is employed, and to each hourly employee in the postal field service, who is serving (i) under a career or career-conditional appointment in the competitive service or under their equivalent in the excepted service; (ii) under an indefinite appointment in the competitive service made under the indefinite-appointment system that preceded the career-conditional appointment system; (iii) under an indefinite appointment without time limitation in the excepted service; (iv) under an overseas limited appointment without time limitation; (v) as a status quo employee including one who becomes an indefinite employee upon promotion, demotion, or reassignment; (vi) under a time-limited appointment in the Foreign Service to which the employee was assigned under a statutory authority that entitled him to reemployment in his former agency, but whose right of reemployment has expired.

(2) This subpart does not apply to an employee who at the time of separation from the service, is offered and declines to accept an equivalent position in his agency in the same commuting area, including an agency to which the employee with his function is transferred in a transfer of functions between agencies. For purposes of this paragraph, an equivalent position is a position of like seniority, tenure, and pay other than a retained rate.

(3) This subpart does not apply to an employee in the government of the District of Columbia who, at the time of separation from the service, has fulfilled the requirements for an immediate annuity under the Policemen and Firemen's Retirement and Disability Amendments of 1957 (secs. 4-521 through 4-538, D.C. Code, 1967 ed.), the Act for the Retirement of Public School Teachers in the District of Columbia (secs. 31-701 through 31-745, D.C. Code, 1967 ed.) or the District of Columbia Judges Retirement Act of 1964 (sec. 11-1701, D.C. Code, 1967 ed.).

(4) This subpart does not apply to an employee who is offered an opportunity to transfer with his agency or part thereof when it is transferred to or merged with a non-Federal organization, when the statute effecting the transfer or merger includes provisions to assure that (i) the pay level of an employee who transfers will not be reduced, (ii) an employee who transfers will be regarded as continuing in the employ of the United States for the purposes of subchapter III of chapter 83 and chapter 87 of title 5, United States Code, and (iii) the receiving organization will deposit currently in the Civil Service Retirement and Disability Fund provided for in section 8348 of title 5, United States Code, the employee deductions and agency contributions required by subchapter III of chapter 83 of title 5, and in the Employees' Group Life Insurance Fund provided for in section 8714 of title 5, United States Code, the employee deductions and agency contributions required by chapter 87 of title 5, United States Code.

(5) This subpart does not apply to an employee of an agency or a subdivision thereof who, when the agency or a subdivision thereof is replaced by a public non-Federal organization created in whole or in part pursuant to an Act of Congress, is offered employment comparable to his employment in the agency at the time of replacement, or within 90 days of the date of replacement accepts any employment, with the successor public non-Federal organization.

(6) This subpart does not apply to an employee who, as the result of the transfer of the operation and maintenance responsibilities for a Federal project to a private organization, is offered comparable employment with the private organization or within 90 days of the date of transfer accepts any employment with the private organization.

(7) This subpart does not apply to an employee who, at the time his activity is transferred to a Federal instrumentality the employees of which are subject to section 2105(c) of title 5, United States Code, because the Federal instrumentality is supported by nonappropriated funds, is offered comparable employment with the Federal instrumentality or accepts any employment with the Federal instrumentality within 90 days from the date of separation.

(8) This subpart does not apply to an employee in the excepted service serving under a Presidential appointment, under an appointment to a position filled by noncareer executive assignment under Part 305 of this chapter, under an appointment to a Schedule C position in Part 213 of this chapter, or under a Senior Executive Service noncareer appointment as provided in Part 214 of this chapter.

[33 FR 12458, Sept. 4, 1968, as amended at 34 FR 9381, June 14, 1969; 45 FR 72999, Nov. 4, 1980]

§ 550.702 Entitlement.

This subpart and section 5595 of title 5, United States Code, apply to the computation and payment of severence pay to an employee who is involuntarily separated from the service, not by removal for cause on charges of misconduct, delinquency, or inefficiency.

§ 550.703 Definitions.

In this subpart:

(a) "Agency" means an agency to which this subpart applies under § 550.701(a).

(b) "Basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee at the time of separation, including premium pay for standby duty paid to an employee on an annual basis under § 550.141, but excluding other additional pay.

(c) "Employee" means an employee to whom this subpart applies and includes the recipient of severance pay under section 5595 of title 5, United States Code, and this subpart.

(d) "Severance pay fund" means the total severance pay to which an employee is entitled under section 5595 of title 5, United States Code.

(e) "Total severance pay" means the amount of severance pay payable to the employee as computed under section 5595(c) of title 5, United States Code.

§ 550.704 General provisions.

(a) *Payment of severance pay.* (1) Except as provided in paragraph (a)(2) or (3) of this section, on an employee's separation, the agency shall compute his severance pay fund, and shall pay him at the same pay period intervals as if still employed the same amount as his basic pay for the pay period immediately before separation until the severance pay fund is exhausted, except that the final payment shall consist only of that portion of the severance pay fund remaining.

(2) For a postal substitute, the basic pay for the pay period immediately before separation as required in paragraph (a)(1) of this section, is the average number of hours in a pay status per pay period for the 26 pay periods immediately before separation, or 80 hours, whichever is less, times the hourly rate of pay in effect at the time of separation.

(3) For an employee who serves in a position in which he regularly alternates between (i) receiving additional annual pay under section 5545(c)(1) of title 5, United States Code, and not receiving such additional annual pay, (ii) receiving a night differential which is considered a part of basic pay and not receiving a night differential which is considered a part of basic pay, or (iii) full-time and part-time tours of duty, the basic pay for the pay period immediately before separation, as required by paragraph (a)(1) of this section, is the average basic pay for the position for the 26 pay periods immediately before separation, computed on the basis of the basic rate of pay in effect at the time of separation.

(b) *Computation of severance pay.* (1) In computing an employee's civilian service under section 5595(c) of title 5, United States Code, the agency shall include all service that is creditable for annual leave accrual purposes under section 6303 of title 5, United

States Code, except that military service shall not be counted unless it interrupts otherwise creditable civilian service. For the purpose of this subparagraph, military service is considered to interrupt civilian service when an employee with a statutory restoration right leaves civilian service creditable for annual leave accrual rate purposes to enter military service, returns to civilian service creditable for annual leave accrual rate purposes within the time limit prescribed for the exercise of the restoration right, and is regarded as having been on furlough or leave of absence during the period of military service.

(2) In computing an employee's total years of creditable civilian service under paragraph (b)(1) of this section, the agency shall credit him with each full year and with 25 percent of a year for each 3 months of creditable civilian service that exceeds 1 or more full years.

(3) In computing an employee's years of age over 40 for the age adjustment allowance under section 5595(c) of title 5, United States Code, the agency shall credit him with 25 percent of a year for each 3 months that his age exceeds 40.

(4) (i) For entitlement to severance pay under section 5595(a)(2)(ii) of title 5, United States Code, the appointment without time limitation must be one of the appointments specified in § 550.701(b)(1) and the termination from that appointment must have resulted from an involuntary separation not by removal for cause on charges of misconduct, delinquency, or inefficiency.

(ii) If an employee retains entitlement to severance pay under section 5595(a)(2)(ii) of that title, "basic pay at the rate received immediately before separation" under section 5595(c) of that title is that basic rate received immediately before the termination of the appointment without time limitation.

(iii) An employee is considered to be serving under an appointment with a definite time limitation for purposes of section 5595(a)(2)(ii) of that title, when (*a*) he accepts an appointment without time limitation in an agency which is scheduled by law or Executive order to be terminated within 5 years of the date of his appointment, and (*b*) the scheduled date of termination for the agency has not been extended beyond 5 years of the date of appointment at the time of the employee's separation.

(5) The basic pay received immediately before separation for an employee who is in a nonpay status at the time of separation is that basic pay he would receive had he been in a pay status at the time of separation.

(c) *Recredit of service.* When an employee is reemployed and entitled to a recredit of service under section 5595(d) of title 5, United States Code, the agency which reemploys him need only record the number of weeks of severance pay hitherto received. Should the employee become entitled to severance pay upon a subsequent separation, the agency shall compute his severance pay fund at the time of the subsequent separation on the basis of all his creditable service and his current age and shall deduct from the number of weeks it will take to exhaust the severance pay fund, as recomputed at the time of his subsequent separation, the number of weeks for which the employee previously received severance pay.

(d) *Determination of 12 months' continuous service.* The requirement of section 5595(b) of title 5, United States Code, is met if the employee on the date of separation has been on the rolls of one or more agencies under one or more appointments without time limitation, or temporary appointments that precede or follow on appointment without time limitation, without any break in service of more than 3 calendar days for at least the preceding 12 calendar months. An employee who is separated by his agency as a result of an injury incurred while in the performance of duty, and who is entitled to a continuation of pay or compensation pursuant to subchapter I of chapter 81 of title 5, United States Code, is entitled, upon reemployment with the Federal Government, to have the entire time, during which he was receiving compensation or continuation of pay, counted as continuous service for purposes of determining whether the employee has satisfied the 12 months continuous service requirement.

(5 U.S.C. 8151)

[33 FR 12458, Sept. 4, 1968, as amended at 34 FR 19748, Dec. 17, 1969; 36 FR 20649, Oct. 28, 1971; 40 FR 23838, June 3, 1975]

§ 550.705 Failure to accept assignment.

When an employee is separated because he declines to accept assignment to another commuting area, the separation is an involuntary separation not by removal for cause on charges of misconduct, delinquency, or inefficiency for purpose of entitlement to severance pay, unless his position description or other written agreement or understanding provides for these assignments.

[36 FR 12729, July 7, 1971]

§ 550.706 Resignation in lieu of involuntary separation.

(a) Except as provided for in paragraph (b) of this section, an employee who is separated because of resignation is deemed to have been involuntarily separated for purposes of entitlement to severance pay, if he has not declined an offer of an equivalent position under § 550.701(b)(2), when he is separated because of resignation (1) after receiving a specific notice in writing by his agency that he is to be involuntarily separated not by removal for cause on charges of misconduct, delinquency, or inefficiency, (2) after receipt of a general notice of reduction in force by his agency which announces that all positions in his competitive area will be abolished or transferred to another commuting area and his resignation is effective on a date which is not more than 1 year before the abolition or transfer, and (3) after receipt of a notice by his agency proposing to separate him for declining to accompany his activity when it is to be moved to another commuting area because of a transfer of function and when all positions in his competitive area are to be abolished or transferred to another commuting area within a period of not more than 1 year.

(b) When the facts and circumstances available to an agency show that a resignation under paragraph (a) of this section is unrelated to the issuance of one of the notices specified in that paragraph, separation of the employee by resignation is a voluntary separation under section 5595 of title 5, United States Code.

[33 FR 12458, Sept. 4, 1968, as amended at 34 FR 123, Jan. 4, 1969]

§ 550.707 Postponement of payments.

(a) When, after a break in service of more than 3 days, an employee who is entitled to severance pay accepts one or more temporary appointments of 1 year or less (including any authorized temporary extensions thereof), the agency which separated him shall suspend the payment of severance pay for the duration of the appointment and shall, at the termination of the appointment, continue the payment of the severance pay fund as prescribed by this subpart and section 5595 of title 5, United States Code. The period of service covered by such an appointment is not creditable for purposes of computing the severance pay it interrupts.

(b) When, without a break or after a break in service of 3 days or less, an employee who is entitled to severance pay accepts one or more temporary part-time or temporary intermittent appointments (including any authorized temporary extensions thereof), the agency which separated him shall suspend and then continue the payment of severance pay exactly as prescribed by paragraph (a) of this section.

§ 550.708 Service with county committees.

For purposes of computation, payment, and termination of severance pay under section 5595 of title 5, United States Code, and this subpart, service by persons as employees of the county committees established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) is considered to be service with an agency.

Subpart H—Back Pay

AUTHORITY: 5 U.S.C. 5596(c).

SOURCE: 46 FR 58275, Dec. 1, 1981, unless otherwise noted.

§ 550.801 Applicability.

(a) This subpart contains regulations of the Office of Personnel Management to carry out section 5596 of title 5, United States Code, which authorizes the payment of back pay and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible) when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), the employee is found by an appropriate authority to have been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. This subpart should be read together with this section of law.

(b) This subpart does not apply to any reclassification action.

§ 550.802 Coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees, as defined in § 550.803 of this subpart.

(b) This subpart does not apply to—

(1) Employees of the government of the District of Columbia; and

(2) Employees of the Tennessee Valley Authority.

§ 550.803 Definitions.

In this subpart:

"Agency" has the meaning given that term in section 5596(a) of title 5, United States Code.

"Appropriate authority" means an entity having authority in the case at hand to correct or direct the correction of an unjustified or unwarranted personnel action, including (a) a court, (b) the Comptroller General of the United States, (c) the Office of Personnel Management, (d) the Merit Systems Protection Board, (e) the Equal Employment Opportunity Commission, (f) the Federal Labor Relations Authority and its General Counsel, (g) the Foreign Service Labor Relations Board, (h) the Foreign Service Grievance Board, (i) an arbitrator in a binding arbitration case, and (j) the head of the employing agency or another official of the employing agency to whom such authority is delegated.

"Collective bargaining agreement" has the meaning given that term in section 7103(a)(8) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1002 of the Foreign Service Act of 1980 (22 U.S.C. 4102(4)).

"Employee" means an employee or former employee of an agency

"Grievance" has the meaning given that term in section 7103(a)(9) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4131). Such a grievance includes a grievance processed under an agency administrative grievance system established under Part 771 of this chapter.

"Pay, allowances, and differentials" means monetary and employment benefits to which an employee is entitled by statute or regulation by virtue of the performance of a Federal function.

"Unfair labor practice" means an unfair labor practice described in section 7116 of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980 (22 U.S.C. 4115).

"Unjustified or unwarranted personnel action" means an act of commission or an act of omission (i.e., failure to take an action or confer a benefit) that an appropriate authority subsequently determines, on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement. Such actions include personnel actions and pay actions (alone or in combination).

§ 550.804 Determining entitlement to back pay.

(a) When an appropriate authority has determined that an employee was affected by an unjustified or unwarranted personnel action, the employee shall be entitled to back pay under section 5596 of title 5, United States

Code, and this subpart only if the appropriate authority finds that the unjustified or unwarranted personnel action resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(b) The requirement for a "timely appeal" is met when—

(1) An employee or an employee's personal representative initiates an appeal or grievance under an appeal or grievance system, including appeal or grievance procedures included in a collective bargaining agreement; a claim against the Government of the United States; a discrimination complaint; or an unfair labor practice charge; and

(2) An appropriate authority accepts that appeal, grievance, claim, complaint, or charge as timely filed.

(c) The requirement for an "administrative determination" is met when an appropriate authority determines, in writing, that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(d) The requirement for "correction of the personnel action" is met when an appropriate authority, consistent with law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement, after a review, corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

§ 550.805 Back pay computations.

(a) When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee—

(1) The employee shall be deemed to have performed service for the agency during the period covered by the corrective action; and

(2) The agency shall compute for the period covered by the corrective action the pay, allowances, and differentials the employee would have received if the unjustified or unwarranted personnel action had not occurred.

(b) No employee shall be granted more pay, allowances, and differentials under section 5596 of title 5, United States Code, and this subpart than he or she would have been entitled to receive if the unjustified or unwarranted personnel action had not occurred.

(c) Except as provided in paragraph (d) of this section, in computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency may not include—

(1) Any period during which an employee was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury; or

(2) Any period during which an employee was unavailable for the performance of his or her duties for reasons other than those related to, or caused by, the unjustified or unwarranted personnel action.

(d) In computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency shall grant, upon request of an employee, any sick or annual leave available to the employee for a period of incapacitation if the employee can establish that the period of incapacitation was the result of illness or injury.

(e) In computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency shall deduct—

(1) Any amounts earned by an employee from other employment during the period covered by the corrective action; and

(2) Any erroneous payments received from the Government as a result of the unjustified or unwarranted personnel action, which, in the case of erroneous payments received from a Federal employee retirement system, shall be returned to the appropriate system. The agency shall include as other employment only employment engaged in by the employee to take the place of employment from which the employee has been separated by the unjustified or unwarranted personnel action.

(f) An agency shall credit annual leave restored to an employee as a result of the correction of an unjustified or unwarranted personnel action in excess of the maximum leave accumulation authorized by law to a separate leave account for use by the employee. The employee shall schedule and use annual leave in such a separate leave account as follows:

(1) A full-time employee shall schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

(2) A part-time employee shall schedule and use excess annual leave in an amount equal to or less than 20 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks.

§ 550.806 Payment of reasonable attorney fees.

(a) An employee or an employee's personal representative may request payment of reasonable attorney fees related to an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. Such a request may be presented only to the appropriate authority that corrected or directed the correction of the unjustified or unwarranted personnel action. However, if the finding that provides the basis for a request for payment of reasonable attorney fees is made on appeal from a decision by an appropriate authority other than the employing agency, the employee or the employee's personal representative shall present the request to the appropriate authority from which the appeal was taken.

(b) The appropriate authority to which such a request is presented shall provide an opportunity for the employing agency to respond to a request for payment of reasonable attorney fees.

(c) Except as provided in paragraph (e) of this section, when an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee, the payment of reasonable attorney fees shall be deemed to be warranted only if—

(1) Such payment is in the interest of justice, as determined by the appropriate authority in accordance with standards established by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(2) There is a specific finding by the appropriate authority setting forth the reasons such payment is in the interest of justice.

(d) When an appropriate authority determines that such payment is warranted, it shall require payment of attorney fees in an amount determined to be reasonable by the appropriate authority. When an appropriate authority determines that such payment is not warranted, no such payment shall be required.

(e) When a determination by an appropriate authority that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee is based on a finding of discrimination prohibited under section 2302(b)(1) of title 5, United States Code, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5(k)).

(f) The payment of reasonable attorney fees shall be allowed only for the services of members of the Bar and for the services of law clerks, paralegals, or law students, when assisting members of the Bar. However, no payment may be allowed under section 5596 of title 5, United States Code, and this subpart for the services of any employee of the Federal Government, except as provided in section 205 of title 18, United States Code, relating to the activities of officers and employees in matters affecting the Government.

(g) A determination concerning whether the payment of reasonable attorney fees is in the interest of justice and concerning the amount of any such payment shall be subject to review or appeal only if provided for by statute or regulation.

(h) This section does not apply to any administrative proceeding that was pending on January 11, 1979.

§ 550.807 Prohibition against setting aside proper promotions.

Nothing in section 5596 of title 5, United States Code, or this subpart shall be construed as authorizing the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

Subpart I—Pay for Irregular or Intermittent Duty Involving Physical Hardship or Hazard

AUTHORITY: 5 U.S.C. 5545(d), 5548(b), unless otherwise noted.

§ 550.901 Purpose.

This subpart prescribes the regulations required by sections 5545(d) and 5548(b) of title 5, United States Code, for the payment of differentials for irregular or intermittent duty involving unusual physical hardship or hazard to employees.

§ 550.902 Definitions.

In this subpart:

(a) "Agency" means an agency as defined in section 5102(a) of title 5, United States Code.

(b) "Duty involving physical hardship" means a duty which may not in itself be hazardous but which causes extreme physical discomfort or distress and which is not adequately alleviated by protective or mechanical devices, such as a duty requiring exposure to extreme temperatures for a long period of time; a duty involving arduous physical exertion, such as a duty which must be performed in cramped conditions; a duty involving exposure to fumes, dust, or noise which causes nausea, skin, eye, ear, or nose irritation.

(c) "Employee" means an employee of an agency who is covered by chapter 51 of title 5, United States Code.

(d) "Hazardous duty" means a duty performed under circumstances in which an accident could result in serious injury or death, such as a duty performed on a high structure where protective facilities are not used, or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist.

(e) "Hazard pay differential" means additional pay for the performance of irregular or intermittent hazardous duty or duty involving physical hardship.

§ 550.903 Establishment of hazard pay differentials.

(a) A schedule of hazard pay differentials, the hazardous duties or duties involving physical hardship for which they are payable, and the period during which they are payable is set out as Appendix A to this subpart and incorporated in and made a part of this section.

(b) Amendments to Appendix A may be made by OPM on its own motion or at the request of an agency. An agency shall submit with its request for an amendment of the appendix information about the hazardous duty or duty involving physical hardship showing (1) the nature of the duty, (2) the degree to which the employee is exposed to hazard or physical hardship, (3) the length of time during which the duty will continue to exist and (4) the degree to which control may be exercised over the physical hardship or hazard, and may recommend the rate of hazard pay differential to be established.

§ 550.904 Authorization of hazard pay differential.

(a) An agency shall pay the hazard pay differential listed in Appendix A to an employee who is assigned to and performs any irregular or intermittent duty specified in the appendix when that duty is not usually involved in carrying out the duties of his position. Hazard pay differential may not be paid an employee when the hazardous duty has been taken into account in the classification of his position.

(b) For the purpose of this section:

(1) "Not usually involved in carrying out the duties of his position" means that even though the hazardous duty may be embraced within the employee's position description it is not performed with sufficient regularity to constitute an element in fixing the grade of the position.

(2) "Has been taken into account in the classification of his position" means that the duty constitutes an element used in establishing the grade of the position.

[33 FR 15199, Oct. 11, 1968; 33 FR 15471, Oct. 18, 1968]

§ 550.905 Payment of hazard pay differential.

When an employee performs duty for which hazard pay differential is authorized, the agency shall pay him the hazard differential for the hours in a pay status on the day (calendar day or, to avoid problems involving uncommon tours of duty, and when designated by the agency, a 24-hour period) on which the duty is performed. For purposes of this section hours in a pay status for work performed during a continuous period extending over 2 days shall be considered to have been performed on the day on which the work began and allowable differential shall be charged to that day.

§ 550.906 Termination of hazard pay differential.

An agency shall discontinue payment of hazard pay differential to an employee when one or more of the conditions requisite for such payment ceases to exist in his case.

§ 550.907 Relationship to additional pay payable under other statutes.

Hazard pay differential is in addition to any additional pay or allowances payable under other statutes. It shall not be considered part of the employee's rate of basic pay in computing additional pay or allowances payable under other statutes.

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR IRREGULAR OR INTERMITTENT HAZARDOUS DUTY UNDER SUBPART I

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
Exposure to Hazardous Weather or Terrain:		
(1) *Work in rough and remote terrain.* When working on cliffs, narrow ledges, or near vertical mountainous slopes where a loss of footing would result in serious injury or death, or when working in areas where there is danger of rock falls or avalanches.	25	First pay period beginning after July 1, 1969.
(2) *Traveling under hazardous conditions.* (a) When travel over secondary or unimproved roads to isolated mountain top installations is required at night, or under adverse weather conditions (such as snow, rain, or fog) which limits visibility to less than 100 feet, when there is danger of rock, mud, or snow slides.	25	Do.
(b) When travel in the wintertime, either on foot or by means of vehicle, over secondary or unimproved roads or snow trails, in sparsely settled or isolated areas to isolated installations is required when there is danger of avalanches, or during "whiteout" phenomenon which limits visibility to less than 10 feet.	25	Do.

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR IRREGULAR OR INTERMITTENT HAZARDOUS DUTY UNDER SUBPART I—Continued

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
(c) When work or travel in sparsely settled or isolated areas results in exposure to temperatures and/or wind velocity shown to be of considerable danger, or very great danger, on the windchill chart (Appendix A-1), and shelter (other than temporary shelter) or assistance is not readily available.	25	Do.
(3) *Snow or ice removal operations.* When participating in snowplowing or snow or ice removal operations, regardless of whether on primary, secondary or other class of roads, when (a) there is danger of avalanche, or (b) there is danger of missing the road and falling down steep mountainous slopes because of lack of snow stakes, "white-out" conditions, or sloping ice-pack covering the snow.	25	Do.
(4) *Water search and rescue operations.* Participating as a member of a water search and rescue team in adverse weather conditions when winds are blowing at 35 m.p.h. (classified as gale winds) or in water search and rescue operations conducted at night.	25	Do.
(5) *Travel on Lake Pontchartrain.* (a) When embarking, disembarking or traveling in small craft (boat) on Lake Pontchartrain when wind direction is from north, northeast, or northwest, and wind velocity is over 15 knots; or.	25	Do.
(b) When travelling in small crafts, where craft is not radar equipped, on Lake Pontchartrain is necessary due to emergency or unavoidable conditions and the trip is made in a dense fog under fog run procedures.	25	Do.
(6) *Hazardous boarding or leaving of vessels.* When duties (a), (b), or (c) are performed under adverse conditions of foul weather, ice, or night and when the sea state is high (3 feet and above):		
(a) Boarding or leaving vessels at sea or standing offshore during lightering or personnel transfer operations.	25	First pay period beginning after May 7, 1970.
(b) Boarding, leaving, or transferring equipment between small boats or rafts and steep, rocky, or coral surrounded shorelines.		
(c) Transferring equipment between a small boat and rudimentary dock by improvised or temporary facility such as an unfastened plank leading from boat to dock.		
(7) *Small craft tests under unsafe sea conditions.* Conducting craft tests to determine the seakeeping characteristics of small craft in a seaway when U.S. storm warnings normally indicate unsafe seas for a particular size craft.	25	First pay period beginning on or after Sept. 28, 1972.
(8) *Working on a drifting sea ice floe.* When the job requires that the work be performed out on sea ice, e.g., installing scientific instruments and making observations for research purposes.	25	First pay period beginning after March 16, 1973.
Exposure to Physiological Hazards:		
(1) *Pressurechamber subject.* (a) Participating as a subject in diving research tests which seek to establish limits for safe pressure profiles by working in a pressure chamber simulating diving or, as an observer to the test or as a technician assembling underwater mock-up components for the test, when the observer or technician is exposed to high pressure gas piping systems, gas cylinders, and pumping devices which are susceptible to explosive ruptures.	25	Do.
(b) *Working in pressurized sonar domes.* Performing checkout of sonar system after sonar dome has been pressurized. This may include such duties as changing transducer elements, setting of transducer turntables, checking of cables, piping, valves, circuits, underwater telephone, and pressurization plugs.	8	First pay period beginning after Feb. 16, 1975.
(c) Working in nonpressurized sonar domes that are a part of an underwater system. Performing certification pretrial inspections, involving such duties as calibrating, adjusting, and photographing equipment, in limited space and with limited egress.	4	First pay period beginning after Feb. 16, 1975.
(2) *Simulated altitude chamber subjects. Observers.* Participating in simulated altitude studies ranging from 18,000 to 150,000 feet either as subject or as observer exposed to the same conditions as the subject.	25	Do.
(3) *Centrifuge subjects.* Participating as subject in centrifuge studies involving elevated G forces above the level of 5 G's whether or not at reduced atmospheric pressure.	25	Do.
(4) *Rotational flight simulator subject.* Participating as a subject in a Rotational Flight Simulator in studies involving continuous rotation in one axis through 360° or in a combination of any axes through 360° at rotation rates greater than 15 r.p.m. for periods exceeding three minutes.	25	First pay period beginning after July 1, 1969.

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR IRREGULAR OR INTERMITTENT HAZARDOUS DUTY UNDER SUBPART I—Continued

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
Hot Work—Working in confined spaces wherein the employee is subject to temperatures in excess of 110° F.	4	First pay period beginning after Feb. 16, 1975.
Exposure to Hazardous Agents, work with or in close proximity to:		
(1) *Explosive or incendiary materials.* Explosive or incendiary materials which are unstable and highly sensitive.	25	First pay period beginning after July 1, 1969.
(2) *At-sea shock and vibration tests.* Arming explosive charges and/or working with, or in close proximity to, explosive armed charges in connection with at-sea shock and vibration tests of naval vessels, machinery, equipment and supplies.	25	Do.
(3) *Toxic chemical materials.* Toxic chemical materials when there is a possibility of leakage or spillage.	25	Do.
(4) *Fire retardant materials tests.* Conducting tests on fire retardant materials when the tests are performed in ventilation restricted rooms where the atmosphere is continuously contaminated by obnoxious odors and smoke which causes irritation to the eyes and respiratory tract.	25	Do.
(5) *Virulent biologicals.* Materials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection.	25	Do.
Participating in Liquid Missile Propulsion Tests and Certain Solid Propulsion Operations:		
(1) *Tanking and detanking.* Tanking or detanking operations of a missile or the test stand "run" bottles with liquid propellants.	25	Do.
(2) *Hoisting a tanked missile.* Hoisting a tanked missile or a solid propellant propulsion system into and/or over the test stand.	25	Do.
(3) *Pressure tests.* Pressure tests on loaded missiles, missile tanks, or run bottles during prefire preparations.	25	First pay period beginning after July 1, 1969.
(4) *Test stand tests.* Test stand operations on loaded missiles under environmental conditions where the high or low temperatures could cause a failure of a critical component.	25	Do.
(5) *Disassembly and breakdown.* Disassembly and breakdown of a contaminated missile system or test stand plumbing after test.	25	Do.
(6) *"Go" condition test stand work.* Working on any test stand above the 50-foot level or any stand work while the system is in a "go" condition.	25	Do.
(7) *Arming and dearming propulsion systems.* Arming, dearming or the installation and/or removal of any squib, explosive device, or a component thereof connected to, or part of, any live or potentially expended liquid or solid propulsion system.	25	Do.
(8) *Demolition and destruct tests.* Demolition, hazards classification, or destruct type tests where the specimen is nonstandard and/or unproven and the test techniques do not conform to standard or proven procedures.	25	Do.
Work in Fuel Storage Tanks:		
When inspecting, cleaning or repairing fuel storage tanks where there is no ready access to an exit, under conditions requiring a breathing apparatus because all or part of the oxygen in the atmosphere has been displaced by toxic vapors or gas, and failure of the breathing apparatus would result in serious injury or death within the time required to leave the tank.	25	Do.
Firefighting:		
(1) *Forest and range fires.* Participating as a member of a firefighting crew in fighting forest and range fires on the fireline.	25	Do.
(2) *Equipment, installation, or building fires.* Participating as an emergency member of a firefighting crew in fighting fires of equipment, installations, or buildings.	25	Do.
(3) *In-water under-pier firefighting operations.* Participating in in-water under-pier firefighting operations (involving hazards beyond those normally encountered in firefighting on land, e.g., strong currents, cold water temperature, etc.).	25	Do.
Work in Open Trenches:		
Work in an open trench 15 feet or more deep until proper shoring has been installed.	25	Do.

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR IRRE
HAZARDOUS DUTY UNDER SUBPART I—Continu

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GE

Irregular or intermittent duty	Rate of hazard pay differential (percent)
Underground Work:	
Work underground performed in the construction of tunnels and shafts, and the inspection of such underground construction, until the necessary lining of the shaft or tunnel has eliminated the hazard.	25
Underwater Duty:	
(1) *Submerged submarine or deep research vehicle.* Duty aboard a submarine or deep research vehicle when it submerges.	25
(2) *Diving.* Diving, including SCUBA (self-contained underwater breathing apparatus) diving, required in scientific and engineering pursuits, or search and rescue operations, when: (a) at a depth of 20 feet or more below the surface; or, (b) visibility is restricted; or, (c) in rapidly flowing or cold water; or, (d) vertical access to the surface is restricted by ice, rock, or other structure; or, (e) testing or working with hardware which presents special hazards (such as work with high voltage equipment or work with underwater mockup components in an underwater space simulation study).	25
Sea Duty Aboard Deep Research Vessels:	
Participating in sea duty wherein the team member is engaged in handling equipment on or over the side of the vessel when the sea-state is high (12-knot winds and 3-foot waves) and the work is done on deck in relatively unprotected areas.	25
Collection of Aircraft Approach and Landing Environmental Data:	
When operating or monitoring camera equipment adjacent to flight deck in the area of maximum hazard during landing sequence while conducting photographic surveys aboard aircraft carriers during periods of heavy aircraft operations.	25
Experimental Landing/Recovery Equipment Tests:	
Participating in tests of experimental or prototype landing and recovery equipment where personnel are required to serve as test subjects in spacecraft being dropped into the sea or laboratory tanks.	25
Land Impact or Pad Abort of Space Vehicle:	
Actual participating in dearming and safing explosive ordinance, toxic propellant and high pressure vessels on vehicles that have land impacted or on vehicles on the launch pad that have reached a point in the countdown where no remote means are available for returning the vehicle to a safe condition.	25
Height Work:	
Working on any structure of at least 50 feet above the base level, ground, deck, floor, roof, etc., under open conditions, if the structure is unstable or if scaffolding guards or other suitable protective facilities are not used, or if performed under adverse conditions such as snow, sleet, ice on walking surfaces, darkness, lightning, steady rain, or high wind velocity.	2
Flying, participating in:	
(1) *Pilot proficiency training.* Flights for pilot proficiency training in aircraft new to the pilot under simulated emergency conditions which parallel conditions encountered in performing flight tests.	2
(2) *Delivery of new aircraft for flight testing.* Flights to deliver aircraft which has been prepared for one-time flight without being test flown prior to delivery flight.	2
(3) *Test flights of new modified, or repaired aircraft.* Test flights of a new or repaired aircraft or modified aircraft when the modification may affect the flight characteristics of the aircraft.	2
(4) *Reduced gravity—parabolic arc flights—subjects/observers.* Reduced gravity flight testing in an aircraft flying a parabolic flight path and providing a testing environment ranging from weightlessness up through +2 gravity conditions.	2
(5) *Launch and recovery.* Test flights involving launch and recovery aboard an aircraft carrier.	2

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR IRREGULAR OR INTERMIT HAZARDOUS DUTY UNDER SUBPART I—Continued

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
(6) *Limited control flights.* Flights undertaken under unusual and adverse conditions (such as extreme weather, maximum load or overload, limited visibility, extreme turbulence, or low level flights involving fixed or tactical patterns) which threaten or severely limit control of the aircraft.	25	Do.
(7) *Flight tests of expandable aircraft tires.* Landing to test aircraft tires designed to deflate upon retraction, undertaken to appraise the normal deflate-reinflate cycle and also to evaluate the capability to make a satisfactory landing with the tires deflated.	25	Do.
(8) *Landing and taking-off in polar areas.* Landing in polar areas on unprepared snow or ice surfaces and/or taking-off under the same conditions.	25	Do.
Experimental Parachute Jumps:		
Participating as a jumper in field exercises to test and evaluate new types of jumping equipment and/or jumping techniques.	25	Do.
Ground Work Beneath Hovering Helicopter:		
Participating in ground operations to attach external load to helicopter hovering just overhead.	25	Do.
Sling-suspended transfers. When performance of duties requires transfer from a helicopter to a ship via a sling on the end of a steel cable or from a ship to another ship via a chair harness hanging from a highline between the ships when both vessels are underway.	25	First pay period beginnin Oct. 11, 1969.
Carrier suitability trials aboard aircraft carriers. Participating in carrier suitability trials aboard aircraft carriers when work is performed on the flight deck during launch, recovery, and refueling operations.	25	Do.
Cargo handling during lightering operations. Off-loading of cargo and supplies from surface ships to Landing Craft—Medium (LCM) boats involving exposure not only to falling cargo but such other hazards as shifting cargo within the LCM, swinging cargo hooks, and possibility of falling between the LCM and cargo vessel.	25	Do.
Work in unsafe structures: Working within or immediately adjacent to a building or structure which has been severely damaged by earthquake, fire, tornado, flood, or similar cause, when the structure has been declared unsafe by competent technical authority, and when such work is considered necessary for the safety of personnel or recovery of valuable materials or equipment, and the work is authorized by competent authority.	25	First pay period beginni or after Apr. 11, 1976.

(5 U.S.C. 5595; E.O. 11257, 3 CFR 1964-1965 Comp., p. 357)

[34 FR 11083, July 1, 1969; 34 FR 12623, Aug. 2, 1969, as amended at 34 FR 15747, Oct 1969; 35 FR 7172, May 7, 1970; 37 FR 20248, Sept. 28, 1972; 39 FR 7115, Mar. 16, 1973; 40 7437, Feb. 20, 1975; 41 FR 12635, Mar. 26, 1976; 41 FR 14165, Apr. 2, 1976]

APPENDIX A-1—WINDCHILL CHART

WINDCHILL CHART											
	Local Temperature (°F)										
Wind Speed (MPH)	32	23	14	5	-4	-13	-22	-31	-40	-49	-58
Calm	32	23	14	5	-4	-13	-22	-31	-40	-49	-58
5	29	20	10	1	-9	-18	-28	-37	-47	-56	-65
10	18	7	-4	-15	-26	-37	-48	-59	-70	-81	-92
15	13	-1	-13	-25	-37	-49	-61	-73	-85	-97	-109
20	7	-6	-19	-32	-44	-57	-70	-83	-96	-109	-121
25	3	-10	-24	-37	-50	-64	-77	-90	-104	-117	-130
30	1	-13	-27	-41	-54	-68	-82	-97	-109	-123	-137
35	-1	-15	-29	-43	-57	-71	-85	-99	-113	-127	-142
40	-3	-17	-31	-45	-59	-74	-87	-102	-116	-131	-145
45	-3	-18	-32	-46	-61	-75	-89	-104	-118	-132	-147
50	-4	-18	-33	-47	-62	-76	-91	-105	-120	-134	-148
For Properly Clothed Persons	Little Danger		Considerable Danger			Very Great Danger					
	Danger From Freezing of Exposed Flesh										

Subpart J—Adjustment of Work Schedules for Religious Observances

§ 550.1001 Coverage.

This subpart applies to each employee in or under an executive agency as defined by section 105 of title 5, United States Code.

(5 U.S.C. 5550a)

[43 FR 46288, Oct. 6, 1978]

§ 550.1002 Compensatory time off for religious observances.

(a) These interim regulations are issued pursuant to title IV of Pub. L. 95-390, enacted September 29, 1978. Under the law and these regulations, an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in overtime work for time lost for meeting those religious requirements.

(b) To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, the agency shall in each instance afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.

(c) For the purpose stated in paragraph (b) of this section, the employee may work such compensatory overtime before or after the grant of compensatory time off. A grant of advanced compensatory time off should be repaid by the appropriate amount of compensatory overtime work within a reasonable amount of time. Compensatory overtime shall be credited to an employee on an hour for hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory overtime earned and used.

(d) The premium pay provisions for overtime work in Subpart A of Part 550 of Title 5, Code of Federal Regulations, and section 7 of the Fair Labor Standards Act of 1938, as amended, do not apply to compensatory overtime work performed by an employee for this purpose.

(e) These interim regulations shall remain in effect until superseded by further regulations on this subject by the Office of Personnel Management.

(5 U.S.C. 5550a)

[43 FR 46288, Oct. 6, 1978]

Subpart K—Collection by Offset From Indebted Government Employees

AUTHORITY: 5 U.S.C. 5514; sec. 8(1), E.O. 11609, 3 CFR, 1971-1975 Comp., 586; redesignated in sec. 2-1, E.O. 12107, 3 CFR, 1978 Comp., 264.

SOURCE: 49 FR 27472, July 3, 1984, unless otherwise noted.

§ 550.1101 Purpose.

This subpart provides the standards to be used by Federal agencies to prepare regulations implementing 5 U.S.C. 5514 and by OPM to review and approve such agency regulations, and establishes procedural guidelines to recover debts from the current pay account of an employee when the employee's creditor and paying agencies are not the same.

§ 550.1102 Scope.

(a) *Coverage.* This subpart applies to agencies and employees defined by § 550.1103.

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of FCCS.

(1) *Excluded debts or claims.* The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicity provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) *Waiver requests and claims to the General Accounting Office.* This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

§ 550.1103 Definitions.

For purposes of this subpart—

"Agency" means (a) an Executive Agency as defined by § 105 of title 5 of the United States Code, the U.S. Postal Service, the U.S. Postal Rate Commission, and (b) a Military Department as defined by § 102 of title 5, United States Code.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

"Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

"Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

"FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 *et seq.*

"Paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

"Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 550.1104 Agency regulations.

Under this subpart and 5 U.S.C. 5514, each creditor agency must issue regulations, subject to approval by the Office of Personnel Management (OPM), governing the collection of a debt by salary offset. Each agency is responsible for assuring that the regulations governing collection of internal debts are uniformly and consistently applied to all its employees. Agency regulations issued under authority of 5 U.S.C. 5514 must contain the following minimum provisions:

(a) *Applicability or scope.* Indicate whether regulations cover internal or Government-wide collections under 5 U.S.C. 5514, or both.

(b) *Entitlement to notice, hearing, written responses and decisions.* Identify when the employee is entitled to notice, when hearings will be offered, when the employee is entitled to a response or decision after exercising his or her rights under § 5514 and this subpart, and if the hearing official's decision is not in the employee's favor or the employee chooses not to request a hearing, what other rights and remedies are available under the statutes or regulations governing the program that requires the collection to be made. Except as provided in paragraph (c) of this section, each employee from whom the creditor agency proposes to collect a debt under this subpart is entitled to receive from the creditor agency—

(1) A written notice as described in paragraph (d) of this section;

(2) The opportunity to petition for a hearing and, if a hearing is given, to receive a written decision from the official holding the hearing on the following issues:

(i) The determination of the creditor agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the creditor agency.

(c) *Exception to entitlement to notice, hearing, written responses, and final decisions.* In regulations covering internal collections, an agency shall except from the provisions of paragraph (b) of this section any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) *Notification before deductions begin.* Provide for notification before deductions begin. Except as provided in paragraph (c) of this section, deductions under the authority of 5 U.S.C. 5514 must not be made unless the head of the creditor agency or his designee provides the employee at least 30 days before any deduction, written notice stating at a minimum:

(1) The creditor agency's determination that a debt is owed, including the origin, nature, and amount of that debt;

(2) The creditor agency's intention to collect the debt by means of deduction from the employee's current disposable pay accont;

(3) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) An explanation of the creditor agency's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency; and documented in the creditor agency's files (4 CFR 102.2(e));

(7) The employee's right to a hearing conducted by an official arranged by the creditor agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by the creditor agency;

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, Part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, §§ 3729-3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under §§ 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(e) *Petitions for hearing.* (1) Prescribe the method and time period for petitioning for a hearing. Ordinarily, a hearing may be requested by filing a written petition addressed to the appropriate creditor agency official stating why the employee believes the determination of the agency concerning the existence or amount of the debt is in error.

(2) The employee's petition or statement must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(f) *Petitions for hearing made after time expires.* Prescribe the action to be taken on a petition for hearing made after the expiration of the period provided in the notice described in paragraph (d) of this section. Ordinarily a creditor agency should accept requests if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(g) *Form of hearings, written responses, and final decisions.* (1) Define the form and content of hearings, written responses, and written decisions to be provided when the employee exercises his or her rights under § 5514 and this subpart.

(2) The form and content of hearings granted under this subpart will depend on the nature of the transactions giving rise to the debts included within each debt collection program. Agencies should refer to 4 CFR 102.3(c) for information on hearing form and content.

(3) Written decisions provided after a request for hearing must, at a minimum, state the facts purported to evidence the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions, in light of the hearing, as to the employee's and/or creditor agency's grounds, the amount and validity of the alleged debt and, where applicable, the repayment schedule.

(h) *Method and source of deductions.* Identify the method and source of deductions. At a minimum, agency regulations must identify the method of collection as salary offset and the source of deductions as current disposable pay, except as provided in paragraphs (l) and (m) of this section.

(i) *Limitation on amount of deductions.* Prescribe the limitations on the amount of the deduction. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see the FCCS). However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(j) *Duration of deductions.* Prescribe the duration of deductions. Ordinarily, debts must be collected in one lump-sum where possible. However, if the employee is financially unable to pay in one lump-sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraphs (l) and (m) of this section.

(k) *When deductions may begin.* Prescribe when deductions will be scheduled to begin in internal agency collections.

(l) *Liquidation from final check.* Provide for offset under 31 U.S.C. 3716, if the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

(m) *Recovery from other payments due a separated employee* Provide for offset under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States, where appropriate, if the debt cannot be liquidated by offset from any final payment due the former employee as of the date of separation. (See 4 CFR 102.3.)

(n) *Interest, penalties, and administrative costs.* Provide for the assessment of interest, penalties, and administrative costs on debts being collected under this subpart. These charges and the waiving of them must be prescribed in accordance with 4 CFR 102.13.

(o) *Non-waiver of rights by payments.* Provide that an employee's involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

(p) *Refunds.* (1) Provide for promptly refunding to the appropriate party, amounts paid or deducted under this subpart when—

(i) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(ii) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(2) Refunds do not bear interest unless required or permitted by law or contract.

§ 550.1105 Review and approval of agency regulations.

(a) *Initial OPM review of agency regulations.* (1) Creditor agencies must submit regulations to the Office of Personnel Management (OPM) for review in accordance with 5 U.S.C. 5514 and this subpart prior to publication of final regulations or prior to implementation, if intragency collection procedures are not published. Submissions must be for agency-wide and/or Government-wide collections.

(2) Creditor agency regulations must contain all provisions specified in § 550.1104. If agency regulations are incomplete, OPM will return them with information as to what must be done to obtain approval.

(b) *Proposed changes in salary offset regulations.* If a creditor agency proposes significant changes in the regulations covering provisions specified in § 550.1104, the proposed revisions must be submitted to OPM for review and approval prior to implementation.

(c) *Supplemental regulations.* When a creditor agency has issued approved regulations covering the provisions specified in § 550.1104, the agency may issue any supplemental regulations or instructions, consistent with its approved regulations, which are necessary for solely internal operations, without prior OPM approval.

§ 550.1106 Requesting recovery when the current paying agency is not the creditor agency.

(a) Under 4 CFR 102.3(b)(3), agencies may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, with certain exceptions explained in that paragraph.

(b) *Format of the request for recovery.* (1) Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must complete and certify the appropriate debt claim form specified by OPM.

(2) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing § 5514 have been approved by OPM.

(3) If the collection must be made in installments, the creditor agency must also advise the paying agency of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required. Ordinarily, hearings may consist of informal conferences before a hearing official in which the employee and creditor agency will be given full opportunity to present evidence, witnesses, and argument. The employee may represent him or herself or be represented by an individual of his or her choice. The creditor agency must provide for maintaining a summary record of the hearings provided under this subpart.

(4) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency must also indicate the action(s) taken under § 5514(b) and give the date(s) the action(s) were taken.

(c) *Submitting the request for recovery.* (1) *Current employees.* The creditor agency must submit the appropriate debt claim form, agreement, or other instruction on the payment schedule to the employee's paying agency.

(2) *Employees who are separating or have separated*—(i) *Employees who are in the process of separating.* If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in § 550.1104(l). The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (c)(2)(iii) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it should send a copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. However, the creditor

agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(ii) *Employees who have already separated.* If the employee is already separated and all payments due from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that monies which are due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*) or other similar funds, be administratively offset in order to collect the debt (see 31 U.S.C. 3716 and the FCCS).

(iii) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the employee's paying agency, he or she transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of the employee's transfer. The original of the debt claim form must be inserted in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency must resume the collection from the employee's current pay account and notify the employee and the creditor agency of the resumption. It will not be necessary for the creditor agency to repeat the due process procedures described by 5 U.S.C. 5514 and this subpart in order to resume the collection. However, it will be the responsibility of the creditor agency to review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) *Processing the debt claim upon receipt by the paying agency.*—

(1) *Incomplete claims.* If the paying agency receives an improperly completed debt claim form, it must return the request with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly completed debt claim form received before action will be taken to collect from the employee's current pay account.

(2) *Complete claim.* If the paying agency receives a properly completed debt claim form, deductions should be scheduled to begin prospectively at the next officially established pay interval. A copy of the debt claim form must be given to the debtor, along with notice of the date deductions will commence if different from that stated on the debt claim form.

(3) The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the debt claim form.

§ 550.1107 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency, and in the event that the creditor agency cannot provide a prompt and appropriate hearing before an adminstrative law judge or before a hearing official furnished pursuant to another lawful arrangement, then the creditor agency may contact an agent of the paying agency designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations, to arrange for a hearing official, and the paying agency must cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations, to arrange for a hearing official. Agencies must cooperate as required by 4 CFR 102.1 and provide a hearing official.

[49 FR 43619, Oct. 31, 1984]

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

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Subpart A—General Provisions

AUTHORITY: Sec. 4(f) of the Fair Labor Standards Act is amended by Pub. L. 93-259 enacted Apr. 8, 1974, 88 Stat. 55; 29 U.S.C. 204f.

SOURCE: 45 FR 85663, Dec. 30, 1980, unless otherwise noted.

§ 551.101 General.

(a) Section 3(e)(2) of the Fair Labor Standards Act of 1938, as amended, authorizes the application of the provisions of the Act to any person employed by the Government of the United States, as specified in that section. Section 4(f) of the Act authorizes the Office of Personnel Management to administer the provisions of the Act for all such employees, except for those who are employed by the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority; the named groups of employees are specifically excluded from the Office of Personnel Management's administration.

(b) The Act provides for minimum standards for both wages and overtime entitlements, and delineates administrative procedures by which covered worktime must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions. It prescribes penalties for the commission of specifically prohibited acts.

(c) This part contains the regulations, criteria, and conditions that the Office of Personnel Management has prescribed for the administration of the Act. This part supplements and implements the Act, and must be read in conjunction with it.

§ 551.102 Definitions.

In this part:

(a) "Act" means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.);

(b) "Agency", for purposes of the Office of Personnel Management's administration of the Act, means any instrumentality of the United States Government, or any constituent element thereof acting directly or indirectly as an employer, as this term is defined in section 3(d) of the Act; but does not include:

(1) The Library of Congress;

(2) The United States Postal Service;

(3) The Postal Rate Commission; or

(4) The Tennessee Valley Authority; all of which are subject to the administration of the Act by the Department of Labor, under Title 29, Code of Federal Regulations.

(c) "Employ" means to engage a person in an activity that is for the benefit of an agency, as defined for this part, and includes any hours of work that are suffered or permitted.

(d) "Employee" means a person who is employed:

(1) In an executive agency;

(2) As a civilian in a military department;

(3) In a nonappropriated fund instrumentality of an executive agency or a military department; or

(4) In a unit of the legislative or judicial branch of the Government that has positions in the competitive service.

(e) "Suffered or permitted" work means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

(f) "Trainee" means a person who does not meet the definition of "employee" in paragraph (d) of this section, and who is assigned or attached to a Federal activity primarily for training. A person who attends a training program under the following conditions is considered a "trainee" and, therefore, is not an "employee" of the Government of the United States for purposes of the Act:

(1) The training, even though it includes actual operation of the facilities of the Federal activity, is similar to that given in a vocational school or other institution of learning;

(2) The training is for the benefit of the individual;

(3) The trainee does not displace regular employees, but, rather, is supervised by them;

(4) The Federal activity which provides the training derives no immediate advantage from the activities of the trainee; on occasion its operations may actually be impeded;

(5) The trainee is not necessarily entitled to a job with the Federal activity at the completion of the training period; and

(6) The agency and the trainee understand that the trainee is not entitled to the payment of wages from the agency for the time spent in training.

(g) "Volunteer" means a person who does not meet the definition of "employee" in paragraph (d) of this section, and who volunteers or donates his or her service the primary benefit of which accrues to the performer of the service or to someone other than the agency. Under such circumstances there is neither an expressed nor an implied compensation agreement. Services performed by such a volunteer include personal services that, if left unperformed, would not necessitate the assignment of an employee to perform them.

(h) "Exempt area" means any foreign country, or any territory within the jurisdiction of the United States other than the following locations:

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The Virgin Islands;

(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Wake Island;

(9) Eniwetok Atoll;

(10) Kwajalein Atoll; and

(11) Johnston Island.

[45 FR 85663, Dec. 30, 1980, as amended at 48 FR 49496, Oct. 25, 1983]

§ 551.103 Coverage.

(a) Any employee of an agency who is not specifically excluded by another statute is covered by the Act. This includes any person who is:

(1) Defined as an employee under section 2105 of title 5, United States Code;

(2) Appointed under other appropriate authority; or

(3) Suffered or permitted to work by an agency whether or not formally appointed.

(b) The following persons are not covered under the Act:

(1) A person appointed under appropriate authority without compensation;

(2) A trainee as defined in § 551.102(f); or

(3) A volunteer as defined in § 551.102(g).

§ 551.104 Administrative authority.

The Office of Personnel Management is the administrator of the provisions of the Act with respect to any person employed by an agency, except for the equal pay provisions contained in section 6(d) of the Act, which are administered by the Equal Employment Opportunity Commission.

Subpart B—Exemptions

AUTHORITY: Sec. 4(f), Fair Labor Standards Act as amended by Pub. L. 93-259, enacted April 8, 1974; 29 U.S.C. 204f.

SOURCE: 48 FR 49496, Oct. 25, 1983, unless otherwise noted.

§ 551.201 Agency authority.

The employing agency shall exempt from the overtime provisions of the Act any employee who meets the exemption criteria of this subpart and such supplemental interpretations or instructions as shall be issued by the Office of Personnel Management.

§ 551.202 General principles governing exemptions.

In all exemption determinations, the agency shall observe the principles that:

(a) Exemption criteria shall be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(b) The burden of proof rests with the agency that asserts the exemption.

(c) All employees who clearly meet the criteria for exemption must be exempted.

§ 551.203 Exemption of General Schedule employees.

(a) Any employee properly classified at GS-4 or below (or the equivalent level in other white collar pay systems) shall be nonexempt;

(b) Any employee properly classified at GS-5 through GS-10 (or the equivalent level in other white collar pay systems) shall be exempt only if the employee is an executive, administrative, or professional employee as defined in §§ 551.204, 551.205, and 551.206 of this subpart;

(c) Except as provided in § 551.207 of this subpart, any employee properly classified at GS-11 or above (or the equivalent level in other white collar pay systems) shall be presumed to be exempt under this subpart. An agency that properly classifies an employee at GS-11 or above shall be deemed to have satisfied the burden of proof for asserting exemption.

§ 551.204 Executive exemption criteria.

An "executive" employee is a supervisor, foreman, or manager who supervises at least three subordinate employees and who meets all the following criteria:

(a) The employee's primary duty consists of management or supervision. This primary duty requirement is met if:

(1) The employee is a General Schedule employee whose position is determined to be "Supervisory" or

"Managerial" under the Supervisory Grade-Evaluation Guide;

(2) The employee is a Federal Wage System employee whose position fully meets or exceeds the "Foreman range of responsibility" as defined in the Job Grading Standard for Supervisors; or

(3) The employee is subject to a pay system other than the General Schedule or the Federal Wage System and the employee's position meets or exceeds the definition of Supervisor in the Supervisory Grade-Evaluation Guide or the employee's position fully meets or exceeds the "Foreman range of responsibility" as defined in the Job Grading Standard for Supervisors.

(b) In addition to the primary duty criterion that applies to all employees, Foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems) and employee classified at GS-5 or GS-6 (or the equivalent in other white collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work.

§ 551.205 Administrative exemption criteria.

An Administrative employee is an advisor, assistant, or representative of management, or a specialist in a management or general business function or supporting service who meets all of the following criteria:

(a) The employee's primary duty consists of work that:

(1) Significantly affects the formulation or execution of management policies or programs; or

(2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a management official.

(b) The employee performs office or other predominantly nonmanual work which is:

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) The employee must frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS-5 or GS-6 (or the equivalent in other white collar system) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions.

§ 551.206 Professional exemption criteria.

A professional employee is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) The employee's primary duty consists of:

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends of the invention, imagination, or talent of the employee.

(b) The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought process for satisfactory performance.

(c) The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS-5 or GS-6 (or the equivalent in other systems), must spend 80 percent or more of the worktime in a representative workweek in professional functions and work that is an essential part of those functions.

§ 551.207 Exceptions by OPM.

The Office of Personnel Management will provide advisory opinions on agency-proposed exceptions to the presumption of exemption for specific occupations at GS-11 or above (or the equivalent level in other white collar pay systems) which is specified in § 551.203(c) of this subpart. Exceptions may not be made before OPM consideration. Requests for advisory opinions from agencies should be sent to: Office of Personnel Management, Agency Compliance and Evaluation, Compliance Division, 1900 E Street, N.W., Washington, D.C. 20415.

§ 551.208 Foreign exemption.

(a) This section provides criteria for applying the "foreign exemption" contained in section 13(f) of the Act. An employee who is exempt under the foreign exemption is not subject to the minimum wage and overtime provisions of the Act. The exemption status of an employee to whom the foreign exemption is not applicable shall be determined under the general criteria contained in this subpart.

(b) Except as provided in § 551.208(d), an agency shall apply the foreign exemption to any employee who is permanently stationed in an "exempt area" as defined in § 551.102(h).

(c) An agency shall also apply the foreign exemption on a workweek basis to an employee on temporary duty who is not permanently stationed in an exempt area, but who performs *all* hours of work in a given workweek in an exempt area.

(d) The foreign exemption is not applicable to an employee permanently stationed in an exempt area for any given workweek in which the employee performs *any* hours of work in the United States or in a territory under the jurisdiction of the United States.

§ 551.209 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

(a) This section is not applicable when an employee is detailed to an identical additional position or to a position of the same grade, series code, and basic duties as the employee is regularly assigned to. This section applies only when an employee is assigned to perform duties which are not included in the employee's representative workweek. For the period of any such temporary duty, the exemption criteria contained in §§ 551.202 through 551.207 of this subpart shall be applied using the procedures specified in this section.

(b) A nonexempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain nonexempt for the entire period of the temporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either:

(i) Classified at GS-7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other wage systems);

(3) The employee's primary duty for the period of temporary duty is exempt duty as defined in this subpart.

(c) Except as provided in § 551.209(e), an exempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt for the entire period of the temporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either:

(i) Classified at GS-7 or above (of the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (of the equivalent level in other wage systems);

(3) The employee's primary duty for the period of temporary duty is *not* exempt duty as defined in this subpart.

(d) An employee who becomes exempt under the criteria contained in § 551.209(b) shall be considered exempt for the entire period of temporary duty. An employee who becomes nonexempt under the criteria contained in § 551.209(c) shall be considered nonexempt for the entire period of temporary duty.

(e) An exempt employee who is classified at GS-5 or GS-6 (or the equivalent level in other white collar pay systems), or who is classified below General Foreman (or the equivalent level in other wage systems) who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt *only* if the employee spends more than 80% of a given workweek performing exempt duties, in which case the employee is exempt for that workweek.

(f) Notwithstanding any other provision of this section, and regardless of an employee's grade level, the agency may determine that an emergency situation exists which threatens the life or safety of people, or serious damage to property, or serious disruption to the operations of an activitiy, and there is no recourse other than to assign qualified employees to perform emergency duties. In such a designated emergency the exemption status of an employee shall be determined on a workweek basis and the employee shall be nonexempt for any workweek in which the employee performs more than 20% nonexempt work.

Subpart C—Minimum Wage Provisions

AUTHORITY: Pub. L. 93-259; 29 U.S.C. 204f.

BASIC PROVISION

§ 551.301 Minimum wage.

(a) Except as provided in § 551.311, an agency shall pay each of its employees wages at rates not less than the minimum wage specified in section 6(a)(1) of the Act for all hours of work as defined in Subpart D of this part.

(b) An employee has been paid in compliance with the minimum wage provisions of this subpart if the employee's hourly regular rate of pay, as defined in § 551.511(a) of this part, for the workweek is equal to or in excess of the rate specified in section 6(a)(1) of the Act.

[45 FR 85664, Dec. 30, 1980]

SUBMINIMUM WAGE

§ 551.311 Subminimum wage.

An agency may, if it meets certain criteria published by the Office of Personnel Management, employ certain groups of less than fully productive employees (e.g., handicapped patient workers) at rates less than the minimum wage specified in section 6(a)(1) of the Act.

[45 FR 85664, Dec. 30, 1980]

Subpart D—Hours of Work

AUTHORITY: Pub. L. 93-259; 29 U.S.C. 204f.

SOURCE: 45 FR 85664, Dec. 30, 1980, unless otherwise noted.

GENERAL PROVISIONS

§ 551.401 Basic principles.

(a) All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency is "hours of work." Such time includes:

(1) Time during which an employee is required to be on duty;

(2) Time during which an employee is suffered or permitted to work; and

(3) Waiting time or idle time which is under the control of an agency and which is for the benefit of an agency.

(b) Paid periods of nonwork (e.g., leave, holidays, or excused absences) are not hours of work for the proposes of this part.

(c) Time that is considered hours of work under this part shall be used only to determine an employee's entitlement to minimum wages or overtime pay under the Act, and shall not be used to determine hours of work for pay administration under title 5, United States Code, or any other authority.

§ 551.402 Agency responsibility.

(a) An agency is responsible for exercising appropriate controls to assure that only that work for which it intends to make payment is performed.

(b) An agency shall keep complete and accurate records of all hours worked by its employees.

APPLICATION OF PRINCIPLES IN RELATION TO NORMAL WORKDAY

§ 551.411 Workday.

(a) For the purposes of this part, "workday" means the period between the commencement of the principal activities that an employee is engaged to perform on a given day, and the cessation of the principal activities for that day. All time spent by an employee in the performance of such activities is hours of work. The workday is not limited to a calendar day or any other 24-hour period.

(b) Any rest period authorized by an agency that does not exeed 20 minutes and that is within the workday shall be considered hours of work.

(c) *Bona fide* meal periods shall not be considered hours of work.

[45 FR 85664, Dec. 30, 1980, as amended at 48 FR 36805, Aug. 15, 1983]

§ 551.412 Preparatory or concluding activities.

(a)(1) If an agency reasonably determines that a preparatory or concluding activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than 10 minutes per workday, the agency shall credit all of the time spent in that activity, including the 10 minutes, as hours of work.

(2) If the time spent in a preparatory or concluding activity is compensable as hours of work, the agency shall schedule the time period for the employee to perform that activity. An employee shall be credited with the actual time spent in that activity during the time period scheduled by the agency. In no case shall the time credited for the performance of an activity exceed the time scheduled by the agency. The employee shall be credited for the time spent performing preparatory or concluding activities in accordance with paragraph (b) of §551.521 of this part.

(b) A preparatory or concluding activity that is not closely related to the performance of the principal activities is considered a preliminary or postliminary activity. Time spent in preliminary or postliminary activities is excluded from hours of work and is not compensable, even if it occurs between periods of activity that are compensable as hours of work.

[48 FR 36805, Aug. 15, 1983]

APPLICATION OF PRINCIPLES IN RELATION TO OTHER ACTIVITIES

§ 551.421 Regular working hours.

(a) Under the Act there is no requirement that a Federal employee have a regularly scheduled administrative workweek. However, under title 5 United States Code, and Part 610 of this chapter, the head of an agency is required to establish work schedules for his or her employees. In determining what activities constitute hours of work under the Act, there is generally a distinction based on whether the activity is performed by an employee during regular working hours or outside regular working hours. For purposes of this part, "regular working hours" means the days and hours of an employee's regularly scheduled administrative workweek established under part 610 of this chapter.

[45 FR 85664, Dec. 30, 1980, as amended at 48 FR 36806, Aug. 15, 1983]

§ 551.422 Time spent traveling.

(a) Time spent traveling shall be considered hours of work if:

(1) An employee is required to travel during regular working hours;

(2) An employee is required to drive a vehicle or perform other work while traveling;

(3) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or

(4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours.

(b) An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal "home to work" travel; such travel is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work as specified in paragraphs (a)(2) and (a)(3) of this section.

(c) An employee who is offered one mode of transportation, and who is permitted to use an alternative mode of transportation, or an employee who travels at a time other than that selected by the agency, shall be credited with the lesser of:

(1) The actual travel time which is hours of work under this section; or

(2) The estimated travel time which would have been considered hours of work under this section had the employee used the mode of transportation offered by the agency, or traveled at the time selected by the agency.

§ 551.423 Time spent on training or attending a lecture, meeting, or conference.

(a) Time spent in training, whether or not it is under the purview of Part 410 of this chapter, shall be administered as follows:

(1) Time spent in training during regular working hours shall be considered hours of work.

(2) Time spent in training outside regular working hours shall be considered hours of work if:

(i) The employee is directed to participate in the training by his or her employing agency; and

(ii) The purpose of the training is to improve the employee's performance of the duties and responsibilities of his or her current position.

(3) Time spent in apprenticeship or other entry level training, or internship or other career related work study training, or training under the Veterans Readjustment Act (5 CFR Part 307) outside regular working hours shall not be considered hours of work, provided no productive work is performed during such periods.

(4) Time spent by an employee performing work for the agency during a period of training shall be considered hours of work.

(b) The following phrases contained in paragraph (a) of this section, are further clarified:

(1) "Directed to participate" means that the training is required by the agency and the employee's performance or continued retention in his or her current position will be adversely affected by nonenrollment in such training.

(2) Training "to improve the employee's performance * * * of his or her current position" is distinguished from upward mobility training or developmental training to provide an employee the knowledge or skills needed for a subsequent position in the same career field.

(c) Time spent by an employee within an agency's allowance of preparatory time for attendance at training shall be considered hours of work if such preparatory time is:

(1) During an employee's regular working hours; or

(2) Outside the employee's regular working hours, and the purpose of the training meets the requirements of paragraph (a)(2) of this section.

(d) Time spent attending a lecture, meeting, or conference shall be considered hours of work if attendance is:

(1) During an employee's regular working hours; or

(2) Outside an employee's regular working hours, and

(i) The employee is directed by an agency to attend such an event; or

(ii) The employee performs work for the benefit of the agency during such attendance.

§ 551.424 Time spent adjusting grievances or performing representational functions.

(a) Time spent by an employee adjusting his or her grievance (or any appealable action) with an agency during the time the employee is required to be on the agency's premises shall be considered hours of work.

(b) "Official time" granted an employee by an agency to perform representational functions during those hours when the employee is otherwise in a duty status shall be considered hours of work. This includes time spent by an employee performing such functions during regular working hours (including regularly scheduled overtime hours), or during a period of irregular, unscheduled overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular, unscheduled overtime period.

§ 551.425 Time spent receiving medical attention.

(a) Time spent waiting for and receiving medical attention for illness or injury shall be considered hours of work if:

(1) The medical attention is required on a workday an employee reported for duty and subsequently became ill or was injured;

(2) The time spent receiving medical attention occurs during the employee's regular working hours; and

(3) The employee receives the medical attention on the agency's premises, or at the direction of the agency at a medical facility away from the agency's premises.

(b) Time spent taking a physical examination that is required for the employee's continued employment with the agency shall be considered hours of work.

§ 551.426 Time spent in charitable activities.

Time spent working for public or charitable purposes at an agency's request, or under an agency's direction or control, shall be considered hours of work. However, time spent voluntarily in such activities outside an employee's regular working hours is not hours of work.

SPECIAL SITUATIONS

§ 551.431 Time spent on standby duty or in an on-call status.

(a) An employee will be considered on duty and time spent on standby duty shall be considered hours of work if:

(1) The employee is restricted to an agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or

(2) The employee, although not restricted to the agency's premises:

(i) Is restricted to his or her living quarters or designated post of duty;

(ii) Has his or her activities substantially limited; and

(iii) Is required to remain in a state of readiness to perform work.

(b) An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:

(1) The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or

(2) The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

§ 551.432 Sleep time.

(a) Except as provided in paragraph (b) of this section, *bona fide* sleep time that fulfills the following conditions shall not be considered hours of work if:

(1) The tour of duty is *24 hours or more;*

(2) During such time there are adequate facilities such that an employee may usually enjoy an uninterrupted period of sleep; and

(3) There are at least 5 hours available for such time during the sleep period.

(b) For employees engaged in fire protection activities or law enforcement activities, the exclusion of sleep time is appropriate for tours of duty *of more than 24 hours* only. However, paragraphs (a)(2) and (a)(3) of this section still apply to employees in these activities.

(c) Not more than 8 hours in a 24-hour period shall be considered sleep time.

(d) If sleep time is interrupted by a call to duty, the time spent on duty is considered hours of work.

Subpart E—Overtime Pay Provisions

AUTHORITY: Pub. L. 93-259; 29 U.S.C. 204f.

SOURCE: 45 FR 85665, Dec. 30, 1980, unless otherwise noted.

BASIC PROVISIONS

§ 551.501 Overtime pay.

(a) Except as otherwise provided in this subpart, an agency shall compensate an employee who is not exempt under Subpart B of this part for all hours of work in excess of 40 in a workweek at a rate equal to one and one-half times the employee's hourly regular rate of pay.

(b) An employee's "workweek" is a fixed and recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to Part 610 of this chapter, the workweek shall be the same as the administrative workweek defined in § 610.102 of this chapter.

(c) The maximum limitation on an employee's aggregate rate of pay under § 550.105 of this chapter does not apply to overtime pay due the employee under this subpart.

OVERTIME PAY COMPUTATIONS

§ 551.511 Hourly regular rate of pay.

(a) An employee's "hourly regular rate" is computed by dividing the total remuneration paid to an employee in the workweek by the total number of hours of work in the workweek for which such compensation was paid.

(b) "Total remuneration" includes all remuneration for employment paid to, or on behalf of, an employee except:

(1) Payments as rewards for service the amount of which is not measured by or dependent on hours of work, production, or efficiency (e.g., a cash award for a suggestion made by an employee and adopted by an agency);

(2) Payments for periods during which no work is performed (e.g., leave, holidays, or excused absences), or reimbursements for travel expenses, or other similar expenses, incurred by an employee in furtherance of an agency's interest, which are not related to hours of work;

(3) Payments made in recognition of services performed during a given period, if both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the agency (e.g., incentive awards for outstandingly high-quality work);

(4) Contributions by an agency to a fund for retirement, insurance, or similar benefits;

(5) Extra compensation provided by a premium rate paid for hours of work performed by an employee in excess of eight in a day, or in excess of the normal workweek applicable to the employee;

(6) Extra compensation provided by a premium rate paid for hours of work performed by an employee on a Sunday or a holiday where such premium rate is at least one and one-half times the employee's rate of pay for work performed in nonovertime hours on other days; or

(7) Extra compensation provided by a premium rate paid for hours of work performed by an employee outside his or her regular working hours, where such premium rate is at least one and one-half times the employee's rate of pay for work performed in nonovertime hours.

§ 551.512 Overtime pay entitlement.

(a) An employee's overtime entitlement under this subpart includes:

(1) The straight time rate of pay times all overtime hours worked; plus

(2) One-half times the employee's hourly regular rate of pay times all overtime hours worked.

(b) An employee's "straight time rate of pay" is equal to the employee's rate of pay for his or her position (exclusive of any premiums or differentials) except for an employee who is authorized annual premium pay under

§ 550.141 or § 550.151 of this chapter. For an employee who is authorized annual premium pay, straight time rate of pay is equal to basic pay plus annual premium pay divided by the hours for which the basic pay plus annual premium pay are intended.

(c) An employee has been paid in compliance with the overtime pay provisions of this subpart only if the employee has received pay at a rate at least equal to the employee's straight time rate of pay for all nonovertime hours of work in the workweek.

§ 551.513 Payment of greater overtime pay entitlement.

An employee entitled to overtime pay under this subpart and overtime pay under § 550.113 of this chapter, or under any other authority, shall be paid under whichever authority provides the greater overtime entitlement in the workweek. This overtime pay shall be paid in addition to all pay, other than overtime pay, to which the employee is entitled under title 5, United States Code, or any other authority.

FRACTIONAL HOURS OF WORK

§ 551.521 Fractional hours of work.

(a) An employee shall be compensated for every minute of regular overtime work.

(b) A quarter of an hour shall be the largest fraction of an hour used for crediting irregular or occasional ovetime work under this subpart. When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full fraction of an hour used to credit overtime work.

[48 FR 36806, Aug. 15, 1983]

COMPENSATORY TIME OFF

§ 551.531 Compensatory time off.

(a) An agency may grant an employee compensatory time off in lieu of overtime pay under appropriate statutory authority, to be taken during the same workweek in which the overtime work was performed.

(b) An employee who earns an overtime pay entitlement under this subpart may be granted compensatory time off in a subsequent workweek provided:

(1) The employee earns overtime entitlement under § 550.113 of this chapter that is equal to or greater than the employee's overtime entitlement under this subpart; and

(2) The employee makes a written request to substitute compensatory time off for overtime payment.

SPECIAL OVERTIME PAY PROVISIONS

§ 551.541 Employees engaged in fire protection activities or law enforcement activities.

(a) An employee engaged in fire protection activities or law enforcement activities shall be paid at a rate equal to one and one-half times the employee's hourly regular rate of pay for those hours in a tour of duty which exceed the overtime standard for a work period specified in section 7(k) of the Act.

(b) The "tour of duty" of an employee engaged in these activities shall include all time the employee is on duty. Meal periods and sleep periods are included in the tour of duty except as otherwise provided in § 551.432 of this part.

(c) Each agency shall establish the "work period" to be used for application of section 7(k) of the Act. The work period shall be at least seven days and not more than 28 days.

PART 572—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES

Subpart A—General Provisions

Sec.
572.101 Determination of manpower shortage for positions at level GS-16 and above (or equivalents).
572.201 Senior Executive Service: New appointees.

Subpart A—General Provisions

§ 572.101 Determination of manpower shortage for positions at level GS-16 and above (or equivalents).

(a) The head of a department or agency shall have the responsibility for determining whether a manpower shortage exists for individual positions in level GS-16 and above (or equivalents). In making such determination, the head shall consider the specific items and guidance material in the Federal Personnel Manual.

(b) A determination that a manpower shortage exists is required before a department or agency may pay travel and transportation expenses for new appointees under section 5723 of title 5, United States Code, and in accordance with the Federal Travel Regulations, FPMR 101-7.

(5 U.S.C. 5723)

[44 FR 54694, Sept. 21, 1979]

§ 572.201 Senior Executive Service: New appointees.

A department or agency may pay travel and transportation expenses for new appointees under section 5723 of title 5, United States Code.

(5 U.S.C. 5723)

[44 FR 54694, Sept. 21, 1979]

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

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APPENDIX A TO PART 581—LIST OF AGENTS DESIGNATED TO ACCEPT LEGAL PROCESS

AUTHORITY: 42 U.S.C. 659, 661-662; 15 U.S.C. 1673; E.O. 12105.

SOURCE: 45 FR 85667, Dec. 30, 1980, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 581.101 Purpose.

Section 659 of title 42 of the United States Code, as amended, provides that moneys, the entitlement to which is based upon remuneration for employment, due from, or payable by, the United States or the District of Columbia to any individual, shall be subject, as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement of such individual's legal obligations to provide child support and/or make alimony payments. The purpose of this part is to implement the objectives of section 659 as it pertains to the executive branch of the Government of the United States.

§ 581.102 Definitions.

In this part: (a) "The executive branch of the Government of the United States" means all "governmental entities" as defined in this section, including therein the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia.

(b) "Governmental entity" means each department, both civilian and military, agency, independent establishment, or instrumentality of the executive branch, including the United States Postal Service, the Postal Rate

Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature of the executive branch, and the governments of the District of Columbia and of the territories and possessions of the United States.

(c) "Private person" means a person who does not have sovereign or other special immunity or privilege which causes that person not be be subject to legal process.

(d) "Child support" means periodic payments of funds for the support and maintenance of a child or children, and, subject to and in accordance with State or local law, includes, but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children; the term also includes attorney's fees, interest, and court costs, if they are expressly made recoverable under a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction.

(e) "Alimony" means periodic payments of funds for the support and maintenance of a spouse or former spouse, and, subject to and in accordance with State or local law, includes, but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support. Alimony also includes attorney's fees, interest, and court costs, if they are expressly made recoverable under a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction. This term does not include any payment or transfer of property or its value by an individual to his/her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses. (See instead 5 U.S.C. 8345(j).)

(f) "Legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, or court ordered wage assignment, which—

(1) Is issued by:

(i) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia;

(ii) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

(iii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law, and

(2) Is directed to, and the purpose of which is to compel, a governmental entity, to make a payment from moneys otherwise payable to an individual, to another party to satisfy a legal obligation of the individual to provide child support and/or make alimony payments.

(g) "Legal obligation" means an obligation to pay alimony and/or child support which is enforceable under appropriate State or local law.

(h) "Obligor" means an individual having a legal obligation to pay alimony and/or child support.

(i) "Remuneration for employment" means compensation paid or payable for personal services, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes, but is not limited to, those items set forth in § 581.103.

(j) "Party" means the person or persons to whom alimony and/or child support payments should be made, or, in the case of an agency established by State or local law, the agency which has been assigned, by law or by agreement, the right to receive such payment or payments.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26279, June 7, 1983]

§ 581.103 Moneys which are subject to garnishment.

(a) For the personal service of a civilian employee obligor:

(1) Saved pay;

(2) Retained pay;

(3) Night differentials;

(4) Sunday and holiday premium pay;

(5) Overtime pay;
(6) Standby pay;
(7) Environmental differentials;
(8) Hazardous duty pay;
(9) Tropical differentials;
(10) Recruitment incentives;
(11) Equalization allowance;
(12) Any payment in consideration of accrued leave;
(13) Severance pay;
(14) Sick pay;
(15) Physicians comparability allowances;
(16) Special pay for physicians and dentists;
(17) Amounts paid pursuant to a personal services contract where the contractor recipient performed the services and received the payments in the capacity as a Federal employee;
(18) Merit pay;
(19) Incentive pay;
(20) Cash awards;
(21) Agency and Presidential incentive awards (except where such award is for making a suggestion); and
(22) Senior Executive Service rank and performance awards.
(23) Moneys due on account of the services of a deceased employee obligor, including: (i) Overtime or premium pay;
(ii) Amounts due as refunds of pay deductions for United States savings bonds;
(iii) Payments for accumulated and current accrued annual or vacation leave as provided for in section 5581 of title 5 of the United States Code;
(iv) Retroactive pay as provided for in section 5344(a)(2) of title 5 of the United States Code; and
(v) Amounts of checks drawn for moneys due which were not delivered by the governmental entity to the employee obligor prior to the employee obligor's death or which were not negotiated and returned to the governmental entity because of the death of the employee obligor, except those moneys due as set forth in § 581.104(i).

(b) For the personal service of an obligor in the uniformed services of the United States:
(1) Basic pay (including service academy cadet and midshipmen pay);
(2) Special pay (including enlistment and re-enlistment bonuses);
(3) Lump sum reserve bonus;
(4) Continuation pay for physicians and dentists;
(5) Special pay for physicians, dentists, optometrists, and veterinarians;
(6) Incentive pay;
(7) Variable incentive pay;
(8) Inactive duty training pay;
(9) Administrative duty pay;
(10) Academy official pay (other than personal money allowances);
(11) Any payments made in consideration of accrued leave (basic pay portion only);
(12) Readjustment pay;
(13) Disability retired pay;
(14) Severance pay (including disability severance pay); and
(15) Cash awards (NOAA Corps).

(c) For obligors generally: (1) Periodic benefits, including a periodic benefit as defined in section 428(h)(3) of title 42 of the United States Code, title II of the Social Security Act, to include a benefit payable in a lump sum if it is commutation of, or a substitute for, periodic payments; or other payments to these individuals under the programs established by subchapter II of chapter 7 of title 42 of the United States Code (Social Security Act) and by chapter 9 of title 45 of the United States Code (Railroad Retirement Act) or any other system or fund established by the United States (as defined in section 662(a) of title 42 of the United States Code) which provides for the payment of:
(i) Pensions;
(ii) Retirement;
(iii) Retired/retainer pay;
(iv) Annuities;
(v) Refunds of retirement contributions where an application has been filed; and
(vi) Dependents' or survivors' benefits when payable to the obligor.
(2) Amounts received under any Federal program for compensation for work injuries; and
(3) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.
(4) Exceptions. Remuneration would not include: (i) Any payment as compensation for death, including any lump sum death benefit under any Federal program;

(ii) Any payment under any Federal program established to provide "black lung" benefits;

(iii) Any payment by the Veterans Administration as pension; or

(iv) Any payments by the Veterans Administration as compensation for a service-connected disability or death, except any compensation paid by the Veterans Administration to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his/her retired pay in order to receive such compensation. In this case, only that part of the Veterans Administration payment which is in lieu of the waived retired/retainer pay is subject to garnishment. Payments of disability compensation by the Veterans Administration to an individual whose entitlement to disability compensation is greater than his/her entitlement to retired pay, and who has waived all of his/her retired pay in favor of disability compensation, are not subject to garnishment or other attachment under this part.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26279, June 7, 1983]

§ 581.104 Moneys which are not subject to garnishment.

(a) Payments made pursuant to the provisions of the Federal Tort Claims Act, as amended, sections 1346(b) and 2671 *et seq.*, of title 28 of the United States Code;

(b) Payments or portions of payments made by the Veterans Administration pursuant to sections 501-562 of title 38 of the United States Code, in which the entitlement of the payee is based on non-service-connected disability or death, age and need;

(c) Refunds and other payments made in connection with overpayments or erroneous payments of income tax and other taxes levied under Title 26 of the United States Code;

(d) Grants;

(e) Fellowships;

(f) Veterans' educational assistance payments under sections 1651 *et seq.*, of Title 38 of the United States Code;

(g) Contracts, except where the contractor recipient performed personal services and received payments in his/her capacity as an employee of a governmental entity; and

(h) Reimbursement for expenses incurred by an individual in connection with his/her employment, or allowances in lieu thereof, and other payments and allowances, including, but not limited to:

(1) In the case of civilian employees:

(i) Uniform allowances;

(ii) Travel and transportation expenses (including mileage allowances);

(iii) Relocation expenses;

(iv) Storage expenses;

(v) Post differentials;

(vi) Foreign areas allowances;

(vii) Education allowances for dependents;

(viii) Separate maintenance allowances;

(ix) Post allowances and supplementary post allowances;

(x) Home service transfer allowances;

(xi) Quarters allowances;

(xii) Cost-of-living allowances (COLA), when applicable to an employee in a foreign area or an employee stationed outside of the continental United States or in Alaska;

(xiii) Remote worksite allowance; and

(xiv) Per diem allowances.

(2) In the case of members of the uniformed services: (i) Position pay (Navy only);

(ii) Basic allowance for quarters;

(iii) Basic allowance for subsistence;

(iv) Station allowances;

(v) Armed Forces health professions scholarship stipends;

(vi) Public Health Service scholarship stipends;

(vii) Travel and transportation allowances;

(viii) Dislocation allowances;

(ix) Family separation allowances;

(x) ROTC subsistence allowance;

(xi) Allowance for recruiting expenses;

(xii) Education allowances for dependents;

(xiii) Clothing allowances for enlisted personnel;

(xiv) Uniform allowances; and

(xv) Personal money allowances for General and Flag officers, and for the Surgeon General of the United States.

(i) Moneys due a deceased employee obligor where the amounts are:

(1) Reimbursement for expenses incurred by the deceased employee in connection with his/her employment, or allowances in lieu thereof, including: (i) Per diem instead of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses in connection therewith;

(ii) Allowances on change of official station;

(iii) Quarters allowances; and

(iv) Cost-of-living allowances (COLA), when applicable as a result of the deceased employee obligor's having been in a foreign area or stationed outside of the continental United States or in Alaska.

(2) Amounts due for payment of cash awards for employees' suggestions.

(3) In the case of volunteers serving under either the Domestic Volunteer Service Act or the Peace Corps Act, all allowances, including, but not limited to, readjustment allowances, stipends, and reimbursements for out-of-pocket expenses.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983]

§ 581.105 Exclusions.

In determining the amount of any "moneys due from or payable by, the United States" to any individual, there shall be excluded amounts which:

(a) Are owed by the individual to the United States;

(b) Are required by law to be deducted from the remuneration or other payment involved, including, but not limited to:

(1) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;

(2) Federal employment taxes;

(3) Amounts mandatorily withheld for the U.S. Soldiers' and Airmen's Home; and

(4) Fines and forfeitures ordered by a court-martial or by a commanding officer;

(c) Are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he/she were entitled. The withholding of additional amounts pursuant to section 3402(i) of title 26 of the United States Code may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding;

(d) Are deducted as health insurance premiums, including, but not limited to, amounts deducted from civil service annuities for Medicare where such deductions are requested by the Health Care Financing Administration;

(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Amounts voluntarily contributed toward additional civil service annuity benefits are considered to be supplementary; or

(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Both Servicemen's Group Life Insurance and "Basic Life" Federal Employees' Group Life Insurance premiums are considered to be normal life insurance premiums; all optional Federal Employees' Group Life Insurance premiums and life insurance premiums paid for by allotment, such as National Service Life Insurance, are considered to be supplementary.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983]

§ 581.106 Future payments.

Moneys paid by a governmental entity which may be due and payable to an individual at some future date, shall not be considered due the individual unless and until all of the conditions necessary for payment of the moneys to the individual have been met, including, but not limited to, the following conditions which might apply:

(a) Retirement;

(b) Resignation from a position in the Federal service; or

(c) Application for payment of moneys by the individual.

Subpart B—Service of Process

§ 581.201 Agent to receive process.

(a) Appendix A to this part lists agents designated to accept service of process.

(b) The head of each governmental entity shall submit to the Office of the General Counsel, Room 5H30, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, for publication in Appendix A to this part, the following information concerning the agent(s) designated to accept service of process:

(1) Title;

(2) Mailing address;

(3) Telephone number; and

(4) Geographical area or region, if applicable.

(c) United States Attorneys are not considered appropriate agents to accept service of process.

§ 581.202 Service of process.

(a) A party using this part shall serve on the designated agent of the governmental entity which has moneys due and payable to the obligor, legal process which names the governmental entity as the garnishee.

(b) Service of legal process brought for the enforcement of an obligation to provide child support and/or alimony shall be accomplished by certified or registered mail, return receipt requested, or by personal service upon the appropriate agent designated in Appendix A to this part, or if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of that governmental entity. The designated agent shall note the date and time of receipt on the legal process. The governmental entity shall make every reasonable effort to facilitate proper service of process on its designated agent(s). If legal process is not directed to any particular official within the entity, or if it is addressed to the wrong individual, the recipient shall, nonetheless, forward the legal process to the designated agent. However, valid service is not accomplished until the legal process is received in the office of the designated agent.

(c) Where it does not appear from the face of the process that it has been brought to enforce the legal obligation(s) defined in § 581.102(d) and/or (e), the process must be accompanied by a certified copy of the court order establishing such legal obligation(s).

(d) Where the State or local law provides for the issuance of legal process without a support order, such other documentation establishing that it was brought to enforce legal obligation(s) defined in § 581.102(d) and/or (e) must be submitted.

(e) In order for the party who caused the legal process to be served to receive the additional five (5) percent provided for in either § 581.402(a) or (b), it must appear on the face of the legal process that the process was brought for the enforcement of a support order for a period which is twelve (12) weeks in arrears, or a certified copy of the support order, or other evidence acceptable to the head of the governmental entity, establishing this fact, must be submitted.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983]

§ 581.203 Information minimally required to accompany legal process.

(a) Sufficient identifying information must accompany the legal process in order to enable processing by the governmental entity named. Therefore, the following identifying information about the obligor, if known, is requested:

(1) Full name;

(2) Date of birth;

(3) Employment number, social security number, Veterans Administration claim number, or civil service retirement claim number;

(4) Component of the governmental entity for which the obligor works, and the official duty station or worksite; and

(5) Status of the obligor, e.g., employee, former employee, or annuitant.

(b) If the information submitted is not sufficient to identify the obligor, the legal process shall be returned directly to the court, or other authority, with an explanation of the deficiency. However, prior to returning the legal process, if there is sufficient time, an attempt should be made to inform the party who caused the legal process to be served, or the party's representative, that it will not be honored unless adequate identifying information is supplied.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983]

Subpart C—Compliance With Process

§ 581.301 Suspension of payment.

Upon proper service of legal process, together with all supplementary documents and information as required by §§ 581.202 and 581.203, the head of the governmental entity, or his/her designee, shall identify the obligor to whom that governmental entity holds moneys due and payable as remuneration for employment and shall suspend, i.e., withhold, payment of such moneys for the amount necessary to permit compliance with the legal process in accordance with this part.

[48 FR 26280, June 7, 1983]

§ 581.302 Notification of obligor.

(a) As soon as possible, but not later than fifteen (15) calendar days after the date of valid service of legal process, the agent designated to accept legal process shall send to the obligor, at his or her duty station or last known home address, written notice:

(1) That such process has been served, including a copy of the legal process, and, if submitted, such other documents as may be required by § 581.202;

(2) Of the maximum garnishment limitations set forth in § 581.402, with a request that the obligor submit supporting affidavits or other documentation necessary for determining the applicable percentage limitation;

(3) That by submitting supporting affidavits or other necessary documentation, the obligor consents to the disclosure of such information to the garnishor; and

(4) Of the percentage that will be deducted if he/she fails to submit the documentation necessary to enable the governmental entity to respond to the legal process within the time limits set forth in § 581.303.

(b) The governmental entity may provide the obligor with the following additional information:

(1) Copies of any other documents submitted in support of the legal process;

(2) That the United States does not represent the interests of the obligor in the pending legal proceedings;

(3) That the obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert; and

(4) That obligors in the uniformed services may avail themselves of the protections provided in sections 520, 521, and 523 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S. Code App. 501 *et seq.*).

§ 581.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process, the agent shall respond within thirty (30) calendar days, or within such longer period as may be prescribed by applicable State or local law, after the date valid service is made. The agent shall also respond within this time period to interrogatories which accompany legal process.

(b) If State or local law authorizes the issuance of interrogatories prior to or after the issuance of legal process, the agent shall respond to the interrogatories within thirty (30) calendar days after receipt: *Provided*, That the document(s) required by § 581.202(c) have been presented.

§ 581.304 Nonliability for disclosure.

(a) No Federal employee whose duties include responding to interrogatories pursuant to § 581.303(b), shall be subject to any disciplinary action or civil or criminal liability or penalty for any disclosure of information made by him/her in connection with the carrying out of any duties pertaining directly or indirectly to answering such interrogatories.

(b) However, a governmental entity would not be precluded from taking disciplinary action against an employee who consistently or purposely failed to provide correct information requested by interrogatories.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983]

§ 581.305 Honoring legal process.

(a) The governmental entity shall comply with legal process, except where the process cannot be complied with because:

(1) It does not, on its face, conform to the laws of the jurisdiction from which it was issued;

(2) The legal process would require the withholding of funds not deemed moneys due from, or payable by, the United States as remuneration for employment;

(3) The legal process is not brought to enforce legal obligation(s) for alimony and/or child support;

(4) It does not comply with the mandatory provisions of this part;

(5) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the governmental entity; or

(6) Where notice is received that the obligor has appealed either the legal process or the underlying alimony and/or child support order, payment of moneys subject to the legal process shall be suspended until the governmental entity is ordered by the court, or other authority, to resume payments. However, no suspension action shall be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending. Where the legal process has been issued by a court in the District of Columbia, a motion to quash shall be deemed equivalent to an appeal.

(b) Under the circumstances set forth in § 581.305(a), or where the governmental entity is directed by the Justice Department not to comply with the legal process, the entity shall respond directly to the court, or other authority, setting forth its objections to compliance with the legal process. In addition, the governmental entity shall inform the garnishor, or the garnishor's representative, that the legal process will not be honored. Thereafter, if litigation is initiated or threatened, the entity shall immediately refer the matter to the United States Attorney for the district from which the legal process issued. To ensure uniformity in the executive branch, governmental entities which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

(c) In the event that a governmental entity is served with more than one legal process for the same moneys due or payable to an individual, then the moneys shall be available to satisfy such processes on a first-come, first-served basis: *Provided*, That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in § 581.402.

(d) Neither the United States, any disbursing officer, nor governmental entity shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part. However, where a governmental entity negligently fails to comply with legal process, the United States shall be liable for the amount that the governmental entity would have paid, if the legal process had been properly honored.

(e) Governmental entities affected by legal process served under this part shall not be required to vary their normal pay or disbursement cycles to comply with the legal process. However, legal process, valid at the time of service, which is received too late to be honored during the disbursement cycle in which it is received, shall be honored to the extent that the legal process may be satisfied during the next disbursement cycle within the limits set forth in § 581.402. The fact that the legal process may have expired during this period would not relieve the governmental entity of its obligation to honor legal process which was valid at the time of service. If, in the next disbursement cycle, no further payment will be due from the entity to the obligor, the entity shall follow the procedures set forth in § 581.306.

(f) If a governmental entity receives legal process which, on its face, appears to conform to the laws of the jurisdiction from which it was issued, the entity shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the obligor.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983]

§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process.

(a) When legal process is served on a governmental entity, and the individual identified in the legal process as the obligor is found not to be entitled to moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the governmental entity, the entity shall follow the procedures set forth in the legal process for that contingency or, if no procedures are set forth therein, shall return the legal process to the court, or other authority from which it was issued, and advise the court, or other authority, that no moneys, the entitlement to which is based upon remuneration for employment, are due from, or payable by, the governmental entity to the named individual.

(b) Where it appears that remuneration for employment is only temporarily exhausted or otherwise unavailable, the court, or other authority, shall be fully advised as to why, and for how long, the remuneration will be unavailable, if that information is known by the governmental entity.

(c) In instances where an obligor employee separates from his/her employment with a governmental entity which is presently honoring a continuing legal process, the entity shall inform the party who caused the legal process to be served, or the party's representative, and the court, or other authority, that the payments are being discontinued. In cases where the obligor has retired, or separated and requested a refund of retirement contributions, or transferred, or is receiving benefits under the Federal Employee's Compensation Act, and where this information is known by the entity, the entity shall provide the party with the designated agent for the new disbursing governmental entity.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26281, June 7, 1983]

Subpart D—Consumer Credit Protection Act Restrictions

§ 581.401 Aggregate disposable earnings.

The "aggregate disposable earnings", when used in reference to the amounts due from, or payable by, the United States or the District of Columbia which are garnishable under the Consumer Credit Protection Act for child support and/or alimony, are the obligor's remuneration for employment less those amounts deducted in accordance with § 581.105.

§ 581.402 Maximum garnishment limitations.

Pursuant to section 1673(b)(2) (A) and (B) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended), unless a lower maximum garnishment limitation is provided by applicable State or local law, the maximum part of the aggregate disposable earnings subject to garnishment to enforce any support order(s) shall not exceed:

(a) Fifty (50) percent of the obligor's aggregate disposable earnings for any workweek, where the obligor asserts by affidavit, or by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than the former spouse and/or child for whose support such order is issued, except that an additional five (5) percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for a period which is twelve (12) weeks prior to that workweek. An obligor shall be considered to be supporting a spouse and/or dependent child only if the obligor provides over half of the spouse's and/or dependent child's support.

(b) Sixty (60) percent of the obligor's aggregate disposable earnings for any workweek, where the obligor fails to assert by affidavit or establishes by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than a former spouse and/or child with respect to whose support such order is issued, except that an additional five (5) percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for a period which is twelve (12) weeks prior to that workweek.

(c) Where, under § 581.302(a)(2), an obligor submits evidence that he/she is supporting a second spouse and/or child, copies of the evidence shall be sent by the governmental entity to the garnishor, or the garnishor's representative, as well as to the court, or other authority, together with notification that the obligor's support claim will be honored. If the garnishor disagrees with the obligor's support claim, the garnishor should immediately refer the matter to the court, or other authority, for resolution.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26281, June 7, 1983]

Subpart E—Implementation by Governmental Entities

§ 581.501 Rules, regulations, and directives by governmental entities.

Appropriate officials of all governmental entities shall, to the extent necessary, issue implementing rules, regulations, and/or directives that are consistent with this part.

APPENDIX A TO PART 581—LIST OF AGENTS DESIGNATED TO ACCEPT LEGAL PROCESS

(This appendix lists the agents designated to accept legal process for the executive branch of the United States, the United States Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution).

I. Departments

DEPARTMENT OF AGRICULTURE

General Counsel, Department of Agriculture, 14th & Independence Ave., S.W., Washington, D.C. 20250; (202) 447-3351

DEPARTMENT OF COMMERCE

1. For employee obligors in the Office of the Secretary, Economic Development Administration, Domestic and International Business Administration, Bureau of Economic Analysis, Office of Minority Business Enterprise, National Fire Prevention and Control Administration, United States Travel Service, Office of Regional Economic Coordination, Appalachian Regional Commission, and Regional Action Planning Commissions: Director, Finance Operations Division, Department of Commerce, Room 6830-A, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 (202) 377-2227

2. *Bureau of the Census:* Chief, Finance Division, FOB #3, Room 1731, Washington, D.C. 20233; (301) 763-5654

3. *National Oceanic and Atmospheric Administration:* Chief, Finance Division, National Oceanic and Atmospheric Administration, Building AD-5, Room 300, 6010 Executive Boulevard, Rockville, MD 20852; (301) 443-8795

4. *Patent and Trademark Office:* Director, Office of Finance, Patent and Trademark Office, Room 2-6D-07, Crystal Plaza, Washington, D.C. 20231; (703) 557-3761

5. *National Bureau of Standards, National Technical Information Service, and Office of Telecommunications:* Chief, Financial Management Division, National Bureau of Standards, Room A-931, Administration Building, Washington, D.C. 20234, (301) 921-2507

6. *Maritime Administration:* Chief, Division of Accounts, Office of Financial Management, Maritime Administration, Room 3090, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; (202) 377-4764

7. In cases where the name of the operating unit in the Department of Commerce cannot be ascertained: Chief, Accounting Standards Division, Office of the Secretary, Room 6800, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; (202) 377-4407

DEPARTMENT OF DEFENSE

Army

a. Civilian Personnel of the Army employed in Germany: Commander, U.S. Army Finance and Accounting Center, Europe, Attention: AEUTCF-CPF, APO New York

09102; Telephone: Schwetzingen, Germany 06202-806333

b. Nonappropriated fund civilian employees of the Army Post Exchanges: Army and Air Force Exchange Service, Attention: GC-G, Dallas, Texas 75222; (214) 330-2174

c. Department of the Army personnel, active and retired, not included in a. or b.: Commander, Army Finance and Accounting Center, Attention: FINCL-G, Indianapolis, IN 46249; (317) 542-4284

Navy

Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199; (216) 522-5301

Marine Corps

Commanding Officer, Marine Corps Finance Center (Code AA), Kansas City, MO 64197; (816) 926-7103

Air Force

1. Active duty, reserve, Air National Guard (ANG), retired military members and civilian employees of appropriated fund activities: Commander, Air Force Accounting and Finance Center, Attention: JA, Denver, CO 80279; (303) 370-7524

2. Non-appropriated fund civilian employees of base exchanges: Army and Air Force Exchange Service, Attention: GC-G, Dallas, TX 75222; (214) 330-2174

3. Civilian employees of all other Air Force nonappropriated fund activities: AFMPC/JA, Attention: NAF Law Division, Randolph AFB, TX 78150; (512) 652-6691

Defense Communications Agency

General Counsel or Deputy General Counsel, Office of the General Counsel (Code 105), Defense Communications Agency, Washington, D.C. 20305; (202) 692-2009

Defense Contract Audit Agency

Director of Personnel, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22314; (202) 274-7325

Defense Logistics Agency

Accounting & Finance Officer (DCSC-CA), Defense Construction Supply Center, Columbus, OH 43215; (614) 236-3161

Accounting & Finance Officer (DESC-CA), Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444; (513) 296-6415

Command Security Officer, Defense General Supply Center, Richmond, VA 23297; (804) 275-4751

Accounting & Finance Officer (DPSC-ZA), Defense Personnel Support Center, 2800 South 20th Street, Philadelphia, PA 19101; (215) 952-2741

Accounting & Finance Officer (DDMP-BD), Defense Depot Mechanicsburg, Mechanicsburg, PA 17055; (717) 790-2992

Accounting & Finance Officer (DDMT-FD), Defense Depot Memphis, 2163 Airways Boulevard, Memphis, TN 38114; (901) 744-5541

Accounting & Finance Officer (DDOU-RF), Defense Depot Ogden, Ogden, UT 84407; (801) 399-7358

Accounting & Finance Officer (DDTC-GD), Defense Depot Tracy, S. Chrisman Road, Tracy, CA 95376; (209) 835-9316

Accounting & Finance Officer (DASC-F), Cameron Station, Alexandria, VA 22314; (202) 274-6108

Accounting & Finance Officer (DCRA-FA), Defense Contract Administration Services Region, Atlanta, 805 Walker Street, Marietta, GA 30060; (404) 424-9304

Accounting & Finance Officer (DCPB-FA), Defense Contract Administration Services Region, Boston, 666 Summer Street, Boston, MA 02210; (617) 542-8893

Accounting & Finance Officer (DCRI-FA), Defense Contract Administration Services Region, Chicago, O'Hare International Airport, 6400 North Mannheim Road, P.O. Box 66475, Chicago, IL 60666; (312) 694-2245

Accounting & Finance Officer (DCRO-FA), Defense Contract Administration Services Region, Cleveland, Anthony J. Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199; (216) 552-5490

Accounting & Finance Center Officer (DCRT-FA), Defense Contract Administration Services Region, Dallas, 500 South Ervay Street, Dallas, TX 75201; (214) 670-1350

Accounting & Finance Officer (DCRL-FA), Defense Contract Administration Services Region, Los Angeles, 11099 South La Cienega Boulevard, Los Angeles, CA 90045; (213) 643-2210

Accounting & Finance Center (DCRN-FA), Defense Contract Administration Services Region, New York, 60 Hudson Street, New York, NY 10013; (212) 374-9408

Accounting & Finance Officer (DCRS-FA), Defense Contract Administration Services Region, St. Louis, 1136 Washington Avenue, St. Louis, MO 63101; (314) 263-65101

Defense Mapping Agency

1. For employee obligors in the Defense Mapping School, DMA Inter American Geodetic Survey, DMA Office of Distribution Services, and the Headquarters: General Counsel, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, D.C. 20305; (202) 254-4431

2. For employee obligors in the DMA Aerospace Center: Counsel, DMA Aerospace

Center, St. Louis Air Force Station, St. Louis, MO 63118; (314) 263-4501

3. For employee obligors in DMA Hydrographic/Topographic Center: Counsel, DMA Hydrographic/Topographic Center, Washington, D.C. 20315; (202) 227-2268

Defense Nuclear Agency

1. For employees of Field Command located at Kirtland AFB, New Mexico: Commander, Air Force Accounting and Finance Center, ATTN: Staff Judge Advocate, Denver, CO 80279

2. For all other employees: General Counsel, Defense Nuclear Agency, Washington, D.C. 20305; (703) 325-7681

Uniformed Services University of the Health Sciences

Director, Personnel/Manpower, Civilian Personnel, 4301 Jones Bridge Road, Bethesda, MD 20014; (202) 295-3050

With respect to other civilian employees of Department of Defense agencies, or other employing activities within the Department of Defense or the Military Departments, the Director of the agency or activity shall assist by receiving and forwarding process to the designated agent in the appropriate disbursing office.

DEPARTMENT OF EDUCATION

Assistant General Counsel, Division of Business and Administrative Law, Room 4091, FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. 20202; (202) 755-1106

DEPARTMENT OF ENERGY

Power Administrations

1. Alaska Power Administration: Administrator, Alaska Power Administration, Department of Energy, P.O. Box 50, Juneau, AK 99802; (907) 566-7405

2. Bonneville Power Administration: Chief, Payroll Branch (DJJ), Bonneville Power Administration, Department of Energy, 1002 N.E. Holladay Street, Portland, OR 97208; (503) 230-5145

3. Southeastern Power Administration: Director, Washington Financial Services Division (CR-46), Mail Station C-212, Department of Energy, Washington, D.C. 20545; (301) 353-5316

4. Southwestern Power Administration: Chief Counsel, Southwestern Power Administration, Department of Energy, P.O. Box Drawer 1619, Tulsa, OK 74101; (918) 581-7426

5. Western Area Power Administration: General Counsel, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401; (303) 231-1529

Field Offices

1. Albuquerque Operations Office and Richland Operations Office (includes Fast Flux Test Facility Project Office): Chief Counsel, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115; (505) 264-7265

2. Chicago Operations Office and Oak Ridge Operations Office (includes Clinch River Breeder Reactor Project Office and the Technical Information Center: Chief Counsel, Oak Ridge Operations Office, Department of Energy, P.O. Box E, Oak Ridge, TN 37830; (615) 693-7153

3. Grand Junction Office, Nevada Operations Office, and San Francisco Operations Office: Chief, Collection Disbursement and Funds Branch, Nevada Operations Office, Department of Energy, P.O. Box 14100, Las Vegas, NV 89114; (702) 734-3166

4. Idaho Operations Office: Chief, General and Fund Accounting Branch, Idaho Operations Office, Department of Energy, 550 Second Street, Idaho Falls, ID 43201; (208) 526-1598

5. Savannah River Operations Office: Director, Finance Division, Savannah River Operations Office, Department of Energy, P.O. Box A, Aiken, SC 29801; (803) 725-2681

6. Pittsburgh Naval Reactors Office, Schenectady Naval Reactors Office, Washington Headquarters, and all other organizations: Director, Washington Financial Services Division (CR-46), Mail Station C-212, Department of Energy, Washington, D.C. 20545; (301) 353-5316

DEPARTMENT OF HEALTH AND HUMAN SERVICES

1. For the garnishment of the remuneration of employees of the Department of Health and Human Services: Garnishment Agent, Office of General Counsel, Room 5362-North Building, 330 Independence Ave., S.W., Washington, D.C. 20201; (202) 472-3109

2. For the garnishment of benefits under Title II of the Social Security Act, legal process may be served on the office manager at any Social Security District or Branch Office. The addresses and telephone numbers of Social Security District and Branch Offices may be found in the local telephone directory.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Chief, Operations Branch, Personnel Systems and Payroll Division, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 2132, Washington, D.C. 20410; (202) 755-8906

DEPARTMENT OF THE INTERIOR

Secretarial Offices; Office of Territorial Affairs; Office of Water Research and Technology; Commission of Fine Arts; Delaware River Basin Commission; and Susquehanna River Basin Commission: Chief, Division of Fiscal Services, Department of the Interior, 18 & C Streets, N.W., Room 5261, Washington, D.C. 20240; (202) 343-5207

Bureau of Mines

Chief, Branch of Finance, Bureau of Mines, Department of the Interior, Denver Federal Center, Bldg. 20, Rm. D-2038, Denver, CO 80225; (303) 234-2354

Fish and Wildlife Service

Chief, Division of Financial and Management Systems, Fish and Wildlife Service, Department of the Interior, 18th & C Streets, N.W., Washington, D.C. 20240; (202) 343-8991

Geological Survey

Chief, Branch of Financial Management, MS 270, Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, VA 22092; (802) 960-6181

Heritage Conservation and Recreation Service

Chief, Division of Personnel and Management, Heritage Conservation and Recreation Service, Department of the Interior, Pension Building, 440 G Street, N.W., Washington, D.C. 20243; (202) 343-4275

National Park Service

a. For employees of the National Capital Region: Chief, Division of Finance, National Capital Region, National Park Service, 1100 Ohio Drive, S.W., Washington, D.C. 20242; (202) 426-6664

b. For employees of the North Atlantic Region: Chief, Division of Finance, North Atlantic Region, National Park Service, 15 State Street, Boston, Massachusetts 02109; (617) 223-1173

c. For employees of the Mid-Atlantic Region: Chief, Division of Finance, Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106; (218) 597-7067

d. For employees of the Southeast Region: Chief, Division of Finance, Southeast Region, National Park Service, 75 Spring Street, S.W., Atlanta, Georgia 30303; (404) 242-3694

e. For employees of the Midwest Region: Chief, Division of Finance, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102; (402) 864-3450

f. For employees of the Southwest Region: Chief, Division of Finance, Southwest Region, National Park Service, Old Santa Fe Trail, P.O. Box 728, Santa Fe, New Mexico 87501; (505) 476-1662

g. For employees of the Rocky Mountain Region: Chief, Division of Finance, Rocky Mountain Region, National Park Service, 645-655 Parfet Avenue, Denver, Colorado 80215; (303) 234-4530

h. For employees of the Western Region: Chief, Division of Finance, Western Region, National Park Service, 450 Golden Gate Avenue, P.O. Box 36036, San Francisco, California 94102; (415) 556-0937

i. For employees of the Pacific Northwest and Alaska Regions: Chief, Division of Finance, Pacific Northwest and Alaska Regions, National Park Service, 601 Fourth and Pike Building, Seattle, Washington 98101; (206) 399-6522

j. For all other employees of the National Park Service or where the garnishor is not certain as to which region the legal process should be sent: Chief, Division of Finance, National Park Service, Department of the Interior, 1100 L Street, N.W., Washington, D.C. 20005; (202) 523-5150

Water and Power Resources Service (formerly Bureau of Reclamation)

Chief, Division of Personnel and Management, Water and Power Resources Service, Department of the Interior, 18th & C Streets, NW, Washington, D.C. 20240; (202) 343-4626

Bureau of Indian Affairs

Chief, Branch of Employee Data and Compensation, Bureau of Indian Affairs, Department of the Interior, 500 Gold Avenue, S.W., Albuquerque, NM 87103; (505) 766-2936

Office of Surface Mining Reclamation and Enforcement

Chief, Budget and Financial Management Division, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue, NW, Washington, D.C. 20245; (202) 343-4926

Bureau of Land Management

Chief, Division of Finance, Bureau of Land Management, Department of the Interior, 18th & C Streets, NW, Room 3559, Washington, D.C. 20240; (202) 343-3607

DEPARTMENT OF JUSTICE

1. For all employees, except employees of the Federal Bureau of Investigation: Assistant Director, Employee Data Service, Systems Operations Staff, Justice Management Division, Department of Justice, P.O. Box 2922, Washington, D.C. 20013; (202) 633-4442

2. For employees of the Federal Bureau of Investigation: Personnel Officer, FBI Headquarters, Department of Justice, J. Edgar Hoover Building, Room 6052, Washington, D.C. 20535; (202) 324-4981

DEPARTMENT OF LABOR

1. Payments to employees of the Department of Labor: Director, Office of Accounting, Room N1309, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210; (202) 523-8314

2. Process relating to moneys due and payable by the United States under the Longshoremen's Act should be directed to the: Associate Director for Longshore and Harbor Workers' Compensation, Room C-3520, Deparment of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210; (202) 523-8721

3. Process relating to benefits payable under the Federal Employees' Compensation Act should be directed to the appropriate district office of the Office of Workers' Compensation Programs.

District No. 1

Deputy Commissioner, Office of Workers' Compensation Programs, Room 1800, John F. Kennedy Building, Government Center, Boston, MA 12203; (617) 223-7655
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

District No. 2

Deputy Commissioner, Office of Workers' Compensation Programs, 1515 Broadway (at West 44th), New York, NY 10036; (212) 399-5501
New Jersey, New York, Puerto Rico, and the Virgin Islands

District No. 3

Deputy Commissioner, Office of Workers' Compensation Programs, Gateway Building, Room 2150, 3535 Market Street, Philadelphia, PA 19104; (215) 596-1180
Delaware, Pennsylvania, and West Virginia

District No. 6

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 400 West Bay Street, Box 35049, Jacksonville, FL 32202; (904) 791-3426
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

District No. 7

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130; (504) 589-6135
Arkansas and Louisiana

District No. 9

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 1240 East 9th Street, Room 867, Cleveland, OH 44199; (216) 522-3803
Indiana, Michigan, and Ohio

District No. 10

Deputy Commissioner, Office of Workers' Compensation Programs, 230 S. Dearborn Street, 8th Floor, Chicago, IL 60604; (312) 353-5650
Illinois, Minnesota, and Wisconsin

District No. 11

Deputy Commissioner, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106; (816) 374-2723

District No. 12

Deputy Commissioner, Office of Workers' Compensation Programs, Drawer 3558, Federal Building, 1961 Stout Street, Denver, CO 80202; (303) 837-5402
Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

District No. 13

Deputy Commissioner, Office of Workers' Compensation Programs, 450 Golden Gate Avenue, Box 36022, San Francisco, CA 94102; (415) 556-6183
Arizona, California, and Nevada

District No. 14

Deputy Commissioner, Office of Workers' Compensation Programs, 4010 Federal Office Building, 909 First Avenue, Seattle, WA 98174; (206) 442-5521
Alaska, Idaho, Oregon, and Washington

District No. 15

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 300 Ala Moana Boulevard, Room 5108, Box 50209, Honolulu, HI 96850; (808) 546-8336
All land and water areas west of the continents of North and South America to 60 degrees east longitude (excluding Iran)

District No. 16

Deputy Commissioner, Office of Workers' Compensation Programs, 555 Griffin Square Building, Room 100, Griffin and Young Streets, Dallas, TX 75201; (214) 767-4712
Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

District No. 17

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 1371 Peachtree Street, NE, Room 331, Atlanta, GA 30309; (404) 881-7566
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

District No. 25

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 666 11th Street, N.W., Room 405, Washington, D.C. 20211; (202) 724-0713

District of Columbia, Maryland, and Virginia

4. Process relating to claims arising out of the places set forth below and process seeking to attach Federal Employees' Compensation Act benefits payable to employees of the Department of Labor should be directed to the:

Associate Director for Federal Employees' Compensation, Room S3229, 200 Constitution Avenue, N.W., Washington, D.C. 20210; (202) 523-7552

Canada, Mexico, Central and South America, and all land and water areas east of the continents of North and South America to 60 degrees east longitude (including Iran but excluding Puerto Rico and the Virgin Islands)

DEPARTMENT OF STATE

Executive Director (L/EX), Office of the Legal Adviser, Department of State, 22nd and C Streets, N.W., Room 5425, Washington, D.C. 20520; (202) 632-0460

Agency for International Development

Chief, Employee Relations Branch, Agency for International Development, SER/PM/PS/ER, Room 100-D, State Annex 2, Washington, D.C. 20523; (202) 632-2954

DEPARTMENT OF TRANSPORTATION

Office of the Secretary, General Counsel, 400 7th Street, SW, Washington, D.C. 20590; (202) 426-4702

United States Coast Guard, Chief Counsel, 2100 2nd Street, SW, Washington, D.C. 20593; (202) 426-1616

Federal Aviation Administration

1. Headquarters (Washington, D.C.) and overseas employees: Chief Counsel, 800 Independence Avenue, S.W., Washington, D.C., 20591; (202) 426-3773

2. Central Region (Nebraska, Kansas, Iowa, and Missouri): Regional Counsel, ACE-7, 601 E. 12th Street, Kansas City, Missouri 64106; (816) 374-5446

3. Alaska Region: Regional Counsel, AAL-7, 701 C Street, Box 14, Anchorage, Alaska 99513; (907) 271-5269

4. Pacific-Asia Region: Regional Counsel, APC-7, P.O. Box 50109, Honolulu, Hawaii 46850; (808) 546-5621

5. Eastern Region (New York, Pennsylvania, New Jersey, West Virginia, Maryland, Delaware and Virginia): Regional Counsel, AEA-7, Federal Building, JFK International Airport, Jamaica, New York 11430; (212) 995-2814

6. Great Lakes Region (Minnesota, Wisconsin, Michigan, Illinois, Indiana and Ohio): Regional Counsel, AGL-7, 2300 East Devon, Des Plaines, Illinois 60018; (312) 694-4500, ext. 311

7. Northeast Region (Maine, New Hampshire, Vermont, Massachusetts, Connecticut and Rhode Island): Regional Counsel, ANE-7, 12 New England Executive Park, Burlington, Massachusetts 01803; (617) 273-7384

8. Northwest Region (Washington, Oregon and Idaho): Regional Counsel, ANW-7, FAA Building, 9010 E. Marginal Way South, King County International Airport (Boeing Field), Seattle, Washington 98108; (206) 767-2670

9. Rocky Mountain Region (Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado): Regional Counsel, ARM-7, 10455 East 25th Avenue, Aurora, Colorado 80010; (303) 837-4846

10. Southern Region (Kentucky, North Carolina, Tennessee, Mississippi, Alabama, Georgia, South Carolina, Florida, Puerto Rico, Republic of Panama and the Virgin Islands): Regional Counsel, ASO-7, P.O. Box 20636, Atlanta, Georgia 30320; (404) 763-7204

11. Southwest Region (Arkansas, Louisiana, Oklahoma, Texas, and New Mexico): Regional Counsel, ASO-7, P.O. Box 1689, Fort Worth, Texas 76101; (213) 536-6270

12. Mike Monroney Aeronautical Center: Center Counsel, AAC-7, P.O. Box 25082, Oklahoma City, Oklahoma 73103; (405) 686-2296

13. FAA Technical Center: Central Region, ACT-7, Atlantic City, New Jersey 08405; (604) 641-8200, ext. 3605

Federal Highway Administration

Chief Counsel, 400 7th Street, S.W., Washington, D.C. 20590; (202) 426-0740

Federal Railroad Administration

1. For all employees, except those of the Alaska Railroad: Chief Counsel, 400 7th Street, S.W., Washington, D.C. 20590; (202) 426-0767

2. For employees of the Alaska Railroad: Personnel Officer, Chief, Employment Section, The Alaska Railroad, RAR-14, Pouch 7-2111, Anchorage, Alaska 99510; (907) 265-2436

Maritime Administration

Chief, Division of Accounting Operations, Room 4429, 400 7th Street, SW, Washington, D.C. 20590

National Highway Traffic Safety Administration

Chief Counsel, 400 7th Street, SW, Washington, D.C. 20590; (202) 426-9511

Urban Mass Transportation Administration

Chief Counsel, 400 7th Street, SW, Washington, D.C. 20590; (202) 426-4063

St. Lawrence Seaway Development Corporation

General Counsel, P.O. Box 520, Massena, New York 13662; (315) 764-0271

Research and Special Programs Administration

Chief Counsel, 400 7th Street, S.W., Washington, D.C. 20590; (202) 755-4972

DEPARTMENT OF THE TREASURY

1. *Office of the Secretary:* General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220; (202) 566-2093

2. *Office of Revenue Sharing:* Chief Counsel, Fifteenth Floor, 2401 E Street, N.W., Washington, D.C. 20226; (202) 634-5182

3. *Office of Foreign Assets Control:* Chief Counsel, Room 401, 1331 G Street, N.W., Washington, D.C. 20220; (202) 376-0236

4. *U.S. Savings Bonds Division:* Assistant General Counsel (AL), Room 1410, Main Treasury Building, 1500 Pennsylvania Avenue., N.W., Washington, D.C. 20220; (202) 566-8464

5. *Bureau of Government Financial Operations:* Legal Counsel, Treasury Annex Number 1, Pennsylvania Avenue and Madison Place, N.W., Washington, D.C. 20226; (202) 566-7534

6. *Internal Revenue Service:* Director, General Legal Services Division, Office of Chief Counsel, 1111 Constitution Avenue., N.W., Washington, D.C. 20224; (202) 566-3488

7. *Bureau of Alcohol, Tobacco & Firearms:* Chief Counsel, Room 5526, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226; (202) 566-7772

8. *Bureau of Public Debt:* Chief Counsel, Room 300, Washington Building, Washington, D.C. 20226; (202) 376-0244

9. *Secret Service:* Legal Counsel, Room 842, 1800 G Street, N.W., Washington, D.C. 20223; (202) 535-5771

10. *Bureau of Engraving & Printing:* Legal Counsel, Room 109M, 14th & C Streets, N.W., Washington, D.C. 20228; (202) 447-1425

11. *Office of the Comptroller of the Currency:* Director, Litigation, Office of Chief Counsel, Fifth Floor, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219; (202) 447-1893

12. *Bureau of the Mint:* Legal Counsel, Room 1033, 501 13th Street, N.W., Washington, D.C. 20220; (202) 376-0565

13. *Federal Law Enforcement Training Center:* Legal Counsel, Building 94, Glynco, GA 31520; (912) 267-2441

14. *Customs Service:* (a) Headquarters (Washington, D.C.) and overseas employees:

Assistant Chief Counsel of Customs, (Hearings and Claims), 1301 Constitution Ave., N.W., Washington, D.C. 20229; (202) 566-2482

(b) For employees not located at headquarters or overseas, service of process may be made upon the Regional Counsel of Customs in whose region the obligor is employed, as listed below:

Region I, Regional Counsel of Customs, Suite 1739, 100 Summer Street, Boston, MA 02110; (617) 223-0075

Region II, Regional Counsel of Customs, Room 732, 6 World Trade Center, New York, NY 10048; (212) 466-4562

Region III, Regional Counsel of Customs, 40 S. Gay Street, Baltimore, MD 21202; (301) 962-4119

Region IV, Regional Counsel of Customs, 99 S.E. 5th Street, Miami, FL 33131; (305) 350-4321

Region V, Regional Counsel of Customs, Suite 2422, 1440 Canal Street, New Orleans, LA 70112; (504) 589-6981

Region VI, Regional Counsel of Customs, Suite 1220, 500 Dallas Avenue, Houston, TX 77002; (713) 226-4887

Region VII, Regional Counsel of Customs, 300 N. Los Angeles Street, Los Angeles, CA 90053; (213) 688-5936

Region VIII, Regional Counsel of Customs, Suite 1000, 211 Main Street, San Francisco, CA 94105; (415) 556-3873

Region IX, Regional Counsel of Customs, Suite 1417, 55 E. Monroe Street, Chicago, IL 60603; (312) 533-7860

II. Agencies

[Unless otherwise indicated below, all agencies of the executive branch shall be subject to service of legal process brought for the enforcement of an individual's obligation to provide child support and/or make alimony payments where such service is sent by certified or registered mail, return receipt requested, or by personal service, upon the head of the agency.]

CENTRAL INTELLIGENCE AGENCY

Director of Personnel Policy, Planning, and Management, Central Intelligence Agency, Washington, D.C. 20505

or

Chief, Special Activities Staff, Office of Personnel Policy Planning, and Management, Central Intelligence Agency, Washington, D.C. 20505; (703) 351-3452

CIVIL AERONAUTICS BOARD

General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5233 or

Director, Office of Human Resources, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-6140

COMMISSION ON CIVIL RIGHTS

Solicitor, Commission on Civil Rights, Room 710, 1121 Vermont Avenue, N.W., Washington, D.C. 20425; (202) 254-3070

COMMODITY FUTURES TRADING COMMISSION

Director of Personnel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581; (202) 254-3275

CONSUMER PRODUCT SAFETY COMMISSION

General Counsel, 5401 Westbard Avenue, Washington, D.C. 20207; (301) 492-6980

EXPORT-IMPORT BANK OF THE UNITED STATES

General Counsel, Export-Import Bank of the United States, Room 947, 811 Vermont Avenue, N.W., Washington, D.C. 20571 (Stop No. 292); (202) 566-8334

FARM CREDIT ADMINISTRATION

Director or Assistant Director, Administrative Division, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20578; (202) 755-4394

FEDERAL DEPOSIT INSURANCE CORPORATION

Counsel, Federal Deposit Insurance Corporation, Room 4105B, 550 17th Street, N.W., Washington, D.C. 20429; (202) 389-4261

FEDERAL ELECTION COMMISSION

Assistant Staff Director, Administration Division, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; (202) 523-4112

FEDERAL HOME LOAN BANK BOARD

Director, Administration Division, Office of the General Counsel, Federal Home Loan Bank Board, 3rd Floor, 1700 G Street, N.W., Washington, D.C. 20552; (202) 377-6462

FEDERAL LABOR RELATIONS AUTHORITY

Director of Personnel, Federal Labor Relations Authority, Room 225, 500 C Street, S.W., Washington, D.C. 20424; (202) 382-0751

FEDERAL MARITIME COMMISSION

Director of Personnel or Deputy Director of Personnel, Federal Maritime Commission, 1100 L Street, N.W., Room 11213, Washington, D.C. 20573; (202) 523-5773

FEDERAL MEDIATION AND CONCILIATION SERVICE

General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, D.C. 20427; (202) 653-5209

GENERAL SERVICES ADMINISTRATION

1. Region 1 (Maine, Vermont, New Hampshire, Massachusetts, Connecticut): Regional Counsel, John W. McCormack Post Office & Courthouse, Boston, MA 02109; (617) 223-2621

2. Region 2 (New York, New Jersey, Puerto Rico, the Virgin Islands): Regional Counsel, 26 Federal Plaza, New York, NY 10007; (212) 264-8306

3. Region 3 (Pennsylvania, West Virginia, Maryland, Virginia, less the greater metropolitan area of Washington, D.C.): Regional Counsel, Ninth and Market Streets, Philadelphia, PA 19107; (215) 597-1319

4. Region 4 (Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Florida): Regional Counsel, R. B. Russell Federal Building and U.S. Courthouse, 75 Spring Street, S.W., Atlanta, GA 30303; (404) 881-3006

5. Region 5 (Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio): Regional Counsel, 230 South Dearborn Street, Chicago, IL 60604; (312) 353-5392

6. Region 6 (Nebraska, Iowa, Kansas, Missouri): Regional Counsel, 1500 E. Bannister Road, Kansas City, MO 64131; (816) 926-7212

7. Region 7 (New Mexico, Texas, Oklahoma, Arkansas, Louisiana): Regional Counsel, 819 Taylor Street, Forth Worth, TX 76102; (817) 334-2325

8. Region 8 (Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado): Regional Counsel, Building 41—Denver Federal Center, Denver, CO 80225; (303) 234-3813

9. Region 9 (California, Nevada, Arizona, Hawaii, Guam): Regional Counsel, 525 Market Street, San Francisco, CA 94105; (415) 556-3963

10. Region 10 (Washington, Oregon, Idaho, Alaska): Regional Counsel, GSA Center, Auburn, Washington 98002; (206) 883-6500, ext. 225

11. Greater metropolitan area of Washington, D.C. (includes parts of Maryland and Virginia): Regional Counsel, 7th & D Streets, S.W., Washington, D.C. 20407; (202) 472-1809

INTERNATIONAL COMMUNICATION AGENCY

General Counsel, International Communication Agency, 1750 Pennsylvania Avenue, N.W., Washington, D.C. 20547; (202) 724-9563

INTERSTATE COMMERCE COMMISSION

Chief, Budget and Fiscal Office, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423

MERIT SYSTEMS PROTECTION BOARD

Director, Office of Administration, Merit Systems Protection Board, Room 912, 1120 Vermont Avenue, N.W., Washington, D.C. 20419; (202) 653-6931

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA Headquarters

Assistant General Counsel for Litigation, 400 Maryland Avenue, S.W., Washington, D.C. 20546; (202) 755-3920

NASA Field Installations

Chief Counsel, Ames Research Center, Moffett Field, CA 94035; (415) 965-5103

Chief Counsel, Dryden Flight Research Center, Edwards, CA 93520; (805) 258-8787

Chief Counsel, Goddard Space Flight Center, Greenbelt, MD 20771; (301) 344-8887

Chief Counsel, Johnson Space Center, Houston, TX 77058; (713) 483-3021

Chief Counsel, Kennedy Space Center, Kennedy Space Center, FL 32899; (305) 867-2550

Chief Counsel, Langley Research Center and Wallops Flight Center, Hampton, VA 23665; (804) 827-3397

Chief Counsel, Lewis Research Center, Cleveland, OH 44135; (216) 433-6411

Chief Counsel, Marshall Space Flight Center, Marshall Space Flight Center, AL 35812; (205) 453-2440

Chief Counsel, National Space Technology Laboratories, NSTL Station, MS 39529; (601) 688-2164

NATIONAL CAPITAL PLANNING COMMISSION

Administrative Officer, National Capital Planning Commission, 1325 G Street, N.W., Washington, D.C. 20576; (202) 724-0170

NATIONAL CREDIT UNION ADMINISTRATION

Director, Division of Personnel, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456; (202) 357-1156

NATIONAL ENDOWMENT FOR THE HUMANITIES

General Counsel, National Endowment for the Humanities, Washington, D.C. 20506; (202) 724-0367

NATIONAL LABOR RELATIONS BOARD

Finance Officer, National Labor Relations Board, 1717 Pennsylvania Avenue, N.W., Room 1300, Washington, D.C. 20570; (202) 254-9307

NATIONAL MEDIATION BOARD

Administrative Officer, National Mediation Board, Washington, D.C. 20572; (202) 523-5950

NATIONAL RAILROAD ADJUSTMENT BOARD

Staff Director/Grievances, National Railroad Adjustment Board, 202 S. State Street, Chicago, IL 60604

NATIONAL SCIENCE FOUNDATION

General Counsel, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550; (202) 634-4266

NUCLEAR REGULATORY COMMISSION

Controller, Nuclear Regulatory Commission, Washington, D.C. 20555; (301) 492-7521

NATIONAL TRANSPORTATION SAFETY BOARD

Chief, Personnel and Training Division, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594, ATTN: AD-30; (202) 472-6166

OFFICE OF PERSONNEL MANAGEMENT

1. Payments to OPM employees: General Counsel, Office of Personnel Management, Room 5H30, 1900 E Street, N.W., Washington, D.C. 20415; (202) 254-6586

2. Payments of retirement benefits under the Civil Service Retirement System: Associate Director for Compensation Office of Personnel Management Allotment Section, P.O. Box 17, Washington, D.C. 20044; (202) 632-5287

PANAMA CANAL COMMISSION

Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011; 52-3519

PENSION BENEFIT GUARANTY CORPORATION

General Counsel or Deputy General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254-4864

RAILROAD RETIREMENT BOARD

General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611; (312) 751-4569

SELECTIVE SERVICE SYSTEM

General Counsel, Selective Service System, 600 E Street, N.W., Washington, D.C. 20435; (202) 724-0433

SMALL BUSINESS ADMINISTRATION

[District Directors are designated to accept legal process for their respective districts as set forth in 13 CFR 101.3-1.]

District Director, Boston District Office, 150 Causeway Street, Boston, MA 02114; (617) 223-2100

District Director, Augusta District Office, 40 Western Avenue, Augusta, ME 04330; (207) 622-6171

District Director, Concord District Office, 55 Pleasant Street, Concord, NH 03301; (603) 224-4041

District Director, Hartford District Office, One Financial Plaza, Hartford CT 06106; (203) 244-3600

District Director, Montpelier District Office, 87 State Street, Montpelier, VT 05602; (802) 229-0538

District Director, Providence District Office, 57 Eddy Street, Providence, RI 02903; (401) 528-4580

District Director, New York District Office, 26 Federal Plaza, New York, NY 10007; (212) 264-4355

District Director, Hato Rey District Office, Chardon & Bolivia Streets, Hato Rey, PR 00918; (809) 753-4572

District Director, Newark District Office, 970 Broad Street, Newark, NJ 07102; (201) 645-2434

District Director, Syracuse District Office, 100 South Clinton Street, Syracuse, NY 13260; (315) 423-5383

District Director, Philadelphia District Office, 231 St. Asaphs Road, Bala Cynwyd, PA 19004; (215) 597-3311

District Director, Baltimore District Office, 8600 LaSalle Road, Towson, MD 21204; (301) 962-4392

District Director, Clarksburg District Office, 109 North 3rd Street, Clarksburg, WV 26301; (304) 623-5631

District Director, Pittsburgh District Office, 1000 Liberty Avenue, Pittsburgh, PA 15222; (412) 644-2780

District Director, Richmond District Office, 400 North 8th Street, Richmond, VA 23240; (804) 782-2617

District Director, Washington, District Office, 1030 15th Street, NW, Washington, D.C. 20417; (202) 655-4000

District Director, Atlanta District Office, 1720 Peachtree Street, NW, Atlanta, GA 30309; (404) 881-4325

District Director, Birmingham District Office, 908 South 20th Street, Birmingham, AL 35205; (205) 254-1344

District Director, Charlotte District Office, 230 S. Tryon Street, Charlotte, NC 28202; (704) 371-6111

District Director, Columbia District Office, 1835 Asembly Street, Columbia, SC 29201; (803) 765-5376

Jackson District Office, 100 West Capitol Street, Jackson, MS 39201; (601) 969-4371

District Director, Jacksonville District Office, 400 West Bay Street, Jacksonville, FL 32202; (904) 791-3782

District Director, Louisville District Office, 600 Federal Place, Louisville, KY 40201; (502) 582-5971

District Director, Miami District Office, 2222 Ponce De Leon Blvd., Coral Gables, FL 33134; (305) 350-5521

District Director, Nashville District Office, 404 James Robertson Parkway, Nashville, TN 37219; (615) 251-5881

District Director, Chicago District Office, 219 South Dearborn Street, Chicago, IL 60604; (312) 353-4528

District Director, Cleveland District Office, 1240 East 9th Street, Cleveland, OH 44199; (216) 522-4180

District Director, Columbus District Office, 85 Marconi Boulevard, Columbus, OH 43215; (614) 469-6860

District Director, Detroit District, 477 Michigan Avenue, Detroit, MI 48226; (313) 226-6075

District Director, Indianapolis District Office, 575 N. Pennsylvania Street, Indianapolis, IN 46204; (317) 269-7272

District Director, Madison District Office, 212 E. Washington Avenue, Madison, WI 53703; (608) 264-5261

District Director, Minneapolis District Office, 12 South 6th Street, Minneapolis, MN 55402; (612) 725-2362

District Director, Dallas District Office, 1100 Commerce Street, Dallas, TX 75242; (214) 767-0605

District Director, Albuquerque District Office, 5000 Marble Avenue, NE, Albuquerque, NM 87110; (505) 766-3430

District Director, Houston District Office, 500 Dallas Street, Houston, TX 77002; (713) 226-4341

District Director, Little Rock District Office, 611 Gaines Street, Little Rock, AR 72201; (501) 378-5871

District Director, Lubbock District Office, 1205 Texas Avenue, Lubbock, TX 79401; (806) 762-7466

District Director, Lower Rio Grande Valley District Office, 222 East Van Buren Street, Harlingen, TX 78550; (512) 423-4534

District Director, New Orleans District Office, 1001 Howard Avenue, New Orleans, LA 70113; (504) 589-6685

District Director, Oklahoma City District Office, 200 N.W. 5th Street, Oklahoma City, OK 73102; (405) 231-4301

District Director, San Antonio District Office, 727 East Durango Street, San Antonio, TX 78206; (512) 229-6250

District Director, Kansas City District Office, 1150 Grande Avenue, Kansas City, MO 64106; (816) 374-3416

District Director, Des Moines District Office, 210 Walnut Street, Des Moines, IA 50309; (515) 284-4422
District Director, Omaha District Office, 19th & Farnum Street, Omaha, NE 68102; (404) 221-4691
District Director, St. Louis District Office, One Mercantile Center, St. Louis, MO 63101; (314) 425-4191
District Director, Wichita District Office, 110 East Waterman Street, Wichita, KS 67202; (316) 267-6571
District Director, Denver District Office, 721 19th Street, Denver, CO 80202; (303) 837-2607
District Director, Casper District Office, 100 East B Street, Casper, WY 82602; (307) 265-5266
District Director, Fargo District Office, 657 2nd Avenue, North, Fargo, ND 58108; (701) 237-5771
District Director, Helena District Office, 301 South Park Avenue, Helena, MT 59601; (406) 449-5381
District Director, Salt Lake City District Office, 125 South State Street, Salt Lake City, UT 84138; (314) 425-5800
District Director, Sioux Falls District Office, 101 South Main Avenue, Sioux Falls, ND 57102; (605) 336-2980
District Director, San Francisco District Office, 211 Main Street, San Francisco, CA 94105; (415) 556-7490
District Director, Honolulu District Office, 300 Ala Moana, Honolulu, HI 96850; (808) 546-8950
District Director, Los Angeles District Office, 350 S. Figueroa Street, Los Angeles, CA 90071; (213) 688-2956
District Director, Phoenix District Office, 3030 North Central Avenue, Phoenix, AZ 85012; (602) 261-3611
District Director, San Diego District Office, 880 Front Street, San Diego, CA 92188; (714) 293-5440
District Director, Seattle District Office, 915 Second Avenue, Seattle, WA 98174; (206) 442-5534
District Director, Las Vegas District Office, 301 E. Stewart, Las Vegas, NV 89101; (702) 385-6611
District Director, Anchorage District Office, 1016 West 6th Avenue, Anchorage, AK 99501; (907) 271-4022
District Director, Boise District Office, 1005 Main Street, Boise, ID 83701; (208) 384-1096
District Director, Portland District Office, 1220 S.W. Third Avenue, Portland, OR 97204; (503) 221-2682
District Director, Spokane District Office, West 920 Riverside Avenue, Spokane, WA 99210; (509) 456-5310

TENNESSEE VALLEY AUTHORITY

1. Payments to TVA employees: Chairman, Board of Directors, Tennessee Valley Authority, 400 Commerce Avenue, Knoxville, TN 37902; (615) 632-2101

2. Payments of retirement benefits under the TVA Retirement System: Chairman, Board of Directors, TVA Retirement System, 400 Commerce Avenue, Knoxville, TN 37902; (615) 632-2904

VETERANS ADMINISTRATION

The fiscal officer at each VA facility shall be the designated agent for VA employee obligors at that facility. When a facility at which an individual is employed does not have a fiscal officer, the address and telephone number listed is for the fiscal officer servicing such a facility. In those limited cases where a portion of VA service-connected benefits may be subject to garnishment, service of process, unless otherwise indicated below, should be made at the regional office nearest the veteran obligor's permanent residence.

Alabama

Fiscal Officer, Birmingham Medical Center, 700 South 19th Street, Birmingham, AL 35233; (205) 933-8101
Mobile Outpatient Clinic Substation
Send to: Fiscal Officer, VA Medical Center, 215 Perry Hill Road, Montgomery, AL 36109; (205) 272-4670 ext. 204
National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501; (601) 863-1972 ext. 225
Fiscal Officer, Montgomery Regional Office, 474 South Court Street, Montgomery, AL 36104; (205) 832-7172
Fiscal Officer, Montgomery Medical Center, 215 Perry Hill Road, Montgomery, AL 36109; (205) 272-4670 ext. 204
Fiscal Officer, Tuscaloosa Medical Center, Tuscaloosa, AL 35401; (205) 553-3760
Fiscal Officer, Tuskegee Medical Center, Tuskegee, AL 36083; (205) 727-0550 ext. 0622

Alaska

Fiscal Officer, Anchorage Regional Office—Outpatient Clinic, Old Federal Bldg. & Post Office, 605 West 4th Avenue, Anchorage, AK 99501; (907) 271-4562
Juneau VA Office
Send to: Fiscal Officer, VA Regional Office, Old Federal Bldg. & Post Office, 605 West 4th Avenue, Anchorage, AK 99501; (907) 271-4562
Sitka National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, 4435 Beacon Avenue, South, Seattle, WA 98108; (206) 762-1016 ext. 286

Arizona

Fiscal Officer, Phoenix Regional Office, 3225 North Central Avenue, Phoenix, AZ 85102; (602) 241-2735
Fiscal Officer, Phoenix Medical Center, Seventh St. & Indian School Rd., Phoenix, AZ 85012; (602) 277-5551
Fiscal Officer, Prescott Medical Center, Prescott, AZ 86313; (602) 445-4860 ext. 264
Prescott National Cemetery Area Office
Send to: Fiscal Officer, VA Center, Prescott, AZ 86313; (602) 445-4860 ext. 264
Fiscal Officer, Tucson Medical Center, Tucson, AZ 85723; (602) 792-1450 ext. 710

Arkansas

Fayetteville National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701; (501) 443-4301
Fiscal Officer, Fayetteville Medical Center, Fayetteville, AR 72701; (501) 443-4301
Fort Smith National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701; (501) 443-4301
Fiscal Officer, Little Rock Regional Office, 1200 W. 3d Street, Little Rock, AR 72201; (501) 378-5142
Fiscal Officer, Little Rock Medical Center, 300 Roosevelt Road, Little Rock, AR 72206; (501) 372-8361 ext. 781
Bell Supply Depot, Send to: Fiscal Officer, VA Supply Depot, P.O. Box 27, Hines, IL 60141; (312) 681-6800
Fiscal Officer, Fresno Medical Center, 2615 East Clinton Avenue, Fresno, CA 94703; (209) 225-6100
Fiscal Officer, Livermore Medical Center, Livermore, CA 94550; (415) 447-2560 ext. 317
Fiscal Officer, Loma Linda Medical Center, 11201 Benton Street, Loma Linda, CA 92357; (714) 825-7084 ext. 2550/2551
Fiscal Officer, Long Beach Medical Center, 5901 East Seventh Street, Long Beach, CA 90822; (213) 498-1313 ext. 2101
Fiscal Officer, Los Angeles Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, CA 90024; (213) 824-7565

Jurisdiction over the following counties in California: Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara and Ventura.

Los Angeles Data Processing Center
Send to: Fiscal Officer, VA Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, CA 90024; (213) 824-7565
Fiscal Officer, Los Angeles Medical Center, Los Angeles (Brentwood), CA 90073; (213) 478-3478
Fiscal Officer, Los Angeles Medical Center, Los Angeles (Wadsworth), CA 90073; (213) 478-3478
Fiscal Officer, Los Angeles Outpatient Clinic, 425 South Hill Street, Los Angeles, CA 90013; (213) 688-3870
Los Angeles Field Office of Audit
Send to: Fiscal Officer, VA Medical Center, Los Angeles (Wadsworth), CA 90073; (213) 478-3478
Los Angeles National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Los Angeles (Brentwood), CA 90073; (213) 478-3478
Fiscal Officer, Martinez Medical Center, 150 Muir Rd., Martinez, CA 94553; (415) 228-6800 ext. 235
Fiscal Officer, Palo Alto Medical Center, 3801 Miranda Avenue, Palo Alto, CA 94304; (415) 493-5000 ext. 5643
Riverside National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Los Angeles (Wadsworth), CA 90073; (213) 478-3478
San Bruno National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Bruno, CA 94121; (415) 221-4810 ext. 315/316
Fiscal Officer, San Diego Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161; (714) 453-7500 ext. 3351
San Diego National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161; (714) 453-7500 ext. 3351
San Diego Outpatient Clinic
Send to: VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161; (714) 453-7500 ext. 3351
Fiscal Officer, San Diego Regional Office, 2022 Camino Del Rio North, San Diego, CA 92108; (714) 293-5703

Jurisdiction over the following counties in California: Imperial, Riverside and San Diego.

San Francisco National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121; (415) 221-4810 ex. 315/316
Fiscal Officer, San Francisco Regional Office, 211 Main Street, San Francisco, CA 94105; (415) 556-0483
Jurisdiction over all counties in California except Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Imperial, Riverside, San Diego, Alpine, Lassen, Modoc and Mono.
Fiscal Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121; (415) 221-4810 ext. 315/316
Fiscal Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA 91343; (213) 891-2377

Colorado

Fiscal Officer, Denver Regional Office, Denver Federal Center, Bldg. 20, Denver CO 80225; (303) 234-3920

Fiscal Officer, Denver Medical Center, 1055 Clermont Street, Denver, CO 80220; (303) 399-8020

Denver National Cemetary Area Office

Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220; (303) 399-8020

Fort Logan National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220; (303) 399-8020

Fort Lyon National Cemetery Arera Office

Send to: Fiscal Officer, VA Medical Center, Fort Lyon, CO 81038; (303) 456-1260

Fiscal Officer, Fort Lyon Medical Center, Fort Lyon, CO 81038; (303) 456-1260

Fiscal Officer, Grand Junction Medical Center, Grand Junction, CO 81501; (303) 242-0731

Connecticut

Fiscal Officer, Hartford Regional Office, 450 Main Street, Hartford, CT 06103; (203) 244-3217

Fiscal Officer, Newington Medical Center, 555 Willard Avenue, Newington, CT 06111; (203) 666-6951 ext 370

Fiscal Officer, West Haven Medical Center, West Spring Street, West Haven, CT 06516; (203) 932-5711 ext. 271

Delaware

Fiscal Officer, Wilmington Medical and Regional Office Center, 1601 Kirkwood Highway, Wilmington, DE 19805; (302) 994-2511

District of Columbia

Finance Division Chief (047B2), Washington Central Office, Room C-50, 810 Vermont Avenue NW., Washington, D.C. 20420; (202) 389-3901

Washington Data Processing Center

Send to: Finance Division Chief (047B2), VA Central Office, Room C-50, 810 Vermont Avenue, NW, Washington, D.C. 20420; (202) 389-3901

Washington Veterans Canteen Service Field Office

Send to: Finance Division Chief (047B2), VA Central Office, Room C-50, 810 Vermont Avenue, NW., Washington, D.C. 20420; (202) 389-3901

Fiscal Officer, Washington Regional Office, 941 North Capitol Street NE., Washington, D.C. 20421; (202) 275-1349

Jurisdiction over all foreign countries or overseas areas except Mexico, American Samoa, Guam, Midway, Wake, the Trust Territory of the Pacific Islands, the Virgin Islands and the Philippines. Also, jurisdiction over Prince George's and Montgomery Counties in Maryland; Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church in Virginia.

Fiscal Officer, Washington Medical Center, 50 Irving Street NW., Washington, D.C. 20422; (202) 389-7593

Florida

Fiscal Officer, Bay Pines Medical Center, National Cemetery Area Office, Bay Pines, FL 33504; (813) 391-9644 ext. 584

Fiscal Officer, Gainesville Medical Center, Archer Road, Gainesville, FL 32602; (904) 376-1611 ext. 6685

Jacksonville Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, Archer Road, Gainesville, FL 32602; (904) 376-1611 ext. 6685

Jacksonville VA Office

Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731; (813) 893-3227

Fiscal Officer, Lake City Medical Center, Lake City, FL 32055; (904) 752-1400

Miami VA Office

Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731; (813) 893-3227

Fiscal Officer, Miami Medical Center, 1201 Northwest 16th St., Miami, FL 33125; (305) 324-4455

Orlando Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, 1300 North 30th Street, Tampa, FL 33612; (813) 971-4500

Riviera Beach Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, 1201 Northwest 16th St., Miami, FL 33125; (305) 324-4455

Pensacola National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501; (601) 863-1972 ext. 225

St. Augustine National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Archer Road, Gainesville, FL 32602; (904) 376-1611 ext. 6685

Fiscal Officer, St. Petersburg Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731; (813) 893-3227

Fiscal Officer, Tampa Medical Center, 13000 North 30th Street, Tampa, FL 33612; (813) 971-4500

Georgia

Fiscal Officer, Atlanta Regional Office, 730 Peachtree Street NE., Atlanta, GA 30308; (404) 881-3381

Atlanta Veterans Canteen Service Field Office

Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033; (404) 321-6111

Atlanta National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road; Decatur, GA 30033; (404) 321-6111

Atlanta Field Office of Audit

Send to: Fiscal Officer, VA Regional Office, 730 Peachtree Street NE., Atlantic, GA 30308; (404) 881-3381

Fiscal Officer, Augusta Medical Center, Augusta, GA 30904; (404) 733-4471 ext. 675-676

Fiscal Officer, Decatur Medical Center, 1670 Clairmont Road, Decatur, GA 30033; (404) 321-6111

Fiscal Officer, Dublin Medical Center, Dublin, GA 31021; (912) 272-1210 ext. 373

Marietta National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033; (404) 321-6111

Hawaii

Fiscal Officer, Honolulu Regional Office, P.O. Box 50188, Honolulu, HI 96850; (808) 546-2109

Jurisdiction over Islands of American Samoa, Guam, Wake, Midway and Trust Territory of the Pacific Islands

Honolulu National Cemetery Area Office

Send to: Fiscal Officer, VA Regional Office, P.O. Box 50188, Honolulu, HI 96850; (808) 546-2109

Idaho

Fiscal Officer, Boise Medical Center, Fifth and Fort Street, Boise, ID 83702; (208) 336-5100 ext. 315

Fiscal Officer, Boise Regional Office, Federal Bldg. & U.S. Courthouse, 550 West Fort St., Box 044, Boise, ID 334-1009

Illinois

Alton National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125; (314) 894-4631

AMF O'Hare Field Office of Audit

Send to: Fiscal Officer, VA Medical Center, Hines, IL 60141; (312) 343-7200 ext. 2481

Fiscal Officer, Chicago Regional Office, 536 South Clark Street, Chicago, IL 60680; (312) 353-4025

Fiscal Officer, Chicago Medical Center, 333 East Huron St. (Lakeside), Chicago, IL 60611; (312) 943-6600

Fiscal Officer, Chicago Medical Center, 820 South Damen Avenue (West Side), Chicago, IL 60680; (312) 666-6500 ext. 281

Fiscal Officer, Danville Medical Center, Danville, IL 61832; (217) 442-8000

Danville National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Danville, IL 61832; (217) 442-8000

Fiscal Officer, Hines Medical Center, Hines, IL 60141; (312) 343-7200 ext. 2481

Hines Marketing Center

Send to: Fiscal Officer, VA Supply Depot, P.O. Box 27, Hines, IL 60141; (312) 681-6800

Fiscal Officer, Hines Supply Depot, P.O. Box 27, Hines, IL 60141; (312) 681-6800

Fiscal Officer, Hines Data Processing Center, P.O. Box 66303, AMF O'Hare, Hines, IL 60666; (312) 681-6650

Fiscal Officer, Marion Medical Center, Marion, IL 62959; (618) 997-5311

Mound City National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Marion, IL 62959; (618) 997-5311

Fiscal Officer, North Chicago Medical Center, North Chicago, IL 60064; (312) 689-1900

Quincy National Cemetery Area Office

Sent to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240; (319) 338-0581 ext. 304

Rock Island National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240; (319) 338-0581 ext. 304

Springfield National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Danville, IL 61832; (217) 442-8000

Indiana

Evansville Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, Marion, Il 62959; (618) 997-5311

Fiscal Officer, Fort Wayne Medical Center, 1600 Randalia Drive, Fort Wayne, IN 46805; (219) 743-5431

Fiscal Officer, Indianapolis Regional Office 575 North Pennsylvania St., Indianapolis, IN 46204; (317) 269-7840

Fiscal Officer, Indianapolis Medical Center, 1481 West 10th Street, Indianapolis, IN 46202; (317) 635-7401 ext. 2293

Indianapolis National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 1481 West 10th Street, Indianapolis, IN 46202; (317) 635-7401 ext. 2293

Fiscal Officer, Marion Medical Center, Marion, IN 46952; (317) 674-3321 ext. 211

Marion National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Marion, IN 46952; (317) 674-3321 ext 211

New Albany National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202; (502) 895-3401

Iowa

Fiscal Officer, Des Moines Regional Office, 210 Walnut Street, Des Moines, IA 50309; (515) 284-4220

Fiscal Officer, Des Moines Medical Center, 30th & Euclid Avenue, Des Moines, IA 50310; (515) 255-2173

Fiscal Officer, Iowa City Medical Center, Iowa City, IA 52240, (319) 338-0581 ext. 304

Keokuk National Cemetery Area Office,

Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240, (319) 338-0581 ext. 304

Fiscal Officer, Knoxville, Medical Center, Knoxville, KY 50138; (515) 842-3101 ext. 241

Kansas

Ft. Leavenworth National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048; (913) 682-2000 ext. 214
Ft. Scott National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048; (913) 682-2000 ext. 214

Kansas

Leavenworth National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048; (913) 682-2000 ext. 214
Fiscal Officer, Leavenworth Medical Center, Leavenworth, KS 66048; (913) 682-2000 ext. 214
Fiscal Officer, Topeka Medical Center, 2200 Gage Blvd. Topeka, KS 66622; (913) 272-3111 ext. 521
Fiscal Officer, Wichita Medical Center, 5500 East Kellogg, Wichita, KS 67218; (316) 685-2221 ext. 256
Wichita Regional Office
Send to: VA Medical Center, 5500 East Kellogg, Wichita, KS 67211; (316) 685-2221 ext. 256
Process for VA service-connected benefits should also be sent to the Wichita Medical Center, rather than to the Wichita Regional Office.

Kentucky

Danville National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 223-4511
Lebanon National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507; (606) 233-4511
Lexington National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507; (606) 233-4511
Fiscal Officer, Lexington Medical Center, Lexington, KY 40507; (606) 233-4511
Fiscal Officer, Louisville Regional Office, 600 Federal Place, Louisville, KY 40202; (502) 582-6482
Fiscal Officer, Louisville Medical Center, 800 Zorn Avenue, Lousville, KY 40202; (502) 895-3401
Louisville National Cemetery Area Office (Zachary Taylor)
Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202; (502) 895-3401
Louisville National Cemetery Area Office (Cave Hill)
Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202; (502) 895-3401
Nancy National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507; (606) 233-4511
Nicholasville National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507; (606) 233-4511
Perryville National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507; (606) 233-4511

Louisiana

Fiscal Officer, Alexandria Medical Center, Alexandria, LA 71303; (318) 442-0251
Baton Rouge National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146; (504) 568-0811
Fiscal Officer, New Orleans Regional Office, 701 Loyola Avenue, New Orleans, LA 70113; (504) 589-6604
Fiscal Officer, New Orleans Medical Center, 1601 Perdido St., New Orleans, LA 70146; (504) 568-0811
Pineville National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Alexandria, LA 71301, (318) 442-0251
Fiscal Officer, Shreveport Medical Center, 510 East Stoner Avenue, Shreveport, LA 71130; (318) 221-8411 ext. 722
Shreveport VA Office
Send to: Fiscal Officer, VA Regional Office, 701 Loyola Avenue, New Orleans, LA 70113; (504) 589-6604
Port Hudson (Zachary) National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, 1601 Perdido St., New Orleans, LA 70146; (504) 568-0811

Maine

Portland VA Office
Send to: Fiscal Officer, VA Center, Togus, ME 04330; (207) 623-8411
Fiscal Officer, Togus Medical & Regional Office Center, Togus, ME 04330; (207) 623-8411
Togus National Cemetery Area Office
Send to: Fiscal Officer, VA Center, Togus, ME 04330; (207) 623-8411

Maryland

Annapolis National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218; (301) 467-9932 ext. 5281/5282
Fiscal Officer, Baltimore Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, MD 21201; (301) 962-4410
Jurisdiction does not include Prince Georges and Montgomery Counties which

are included under the Washington, D.C. Regional Office.

Baltimore Outpatient Clinic

Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218; (301) 467-9932 ext. 5281/5282

Fiscal Officer, Baltimore Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218; (301) 467-9932 ext. 5281/5282

Baltimore National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218; (301) 467-9932 ext. 5281/5282

Baltimore National Cemetery Area Office (Loudon Park)

Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218; (301) 467-9932 ext. 5281/5282

Fiscal Officer, Fort Howard Medical Center, Fort Howard, MD 21052; (301) 447-1800 ext. 328

Hyattsville Field Office of Audit

Send to: Finance Division Chief (047B2), VA Central Office, Room C-50, 810 Vermont Avenue NW., Washington, D.C. 20420; (202) 389-3901

Fiscal Officer, Perry Point Medical Center, Perry Point, MD 21902; (301) 642-2411 ext. 313

Massachusetts

Fiscal Officer, Bedford Medical Center, 200 Springs Road, Bedford, MA 01730; (617) 275-7500

Fiscal Officer, Boston Regional Office, John Kennedy Bldg., Government Center, Boston, MA 02203; (617) 223-3034

Jurisdiction over certain towns in Bristol and Plymouth Counties and the counties of Barnstable, Dukes and Nantucket is allocated to the Providence, Rhode Island Regional Office.

Boston Outpatient Clinic

Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130; (617) 232-9500 ext. 427/420

Fiscal Officer, Boston Medical Center, 150 South Huntington Avenue, Boston, MA 02130; (617) 232-9500 ext. 427-420

Bourne National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Brockton, MA 02401; (617) 583-4500 ext. 266

Fiscal Officer, Brockton Medical Center, Brockton, MA 02401; (617) 583-4500 ext. 266

Lowell Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130; (617) 322-9500 ext. 427/420

New Bedford Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, Providence, RI 02908; (401) 273-7100

Fiscal Officer, Northampton Medical Center, Northampton, MA 01060; (413) 584-4040

Springfield Outpatient Clinic Substa

Send to: Fiscal Officer, VA Medical
Northampton, MA 01060; (413) 584

Springfield VA Office

Send to: Fiscal Officer, VA Regional
John Kennedy Bldg., Government
Boston, MA 02203; (617) 223-3034

Fiscal Officer, West Roxbury
Center, 1400 Veterans of Foreig
Parkway, West Roxbury, MA 0213
323-7700 ext. 5650

Worcester Outpatient Clinic Substati

Send to: Fiscal Officer, VA Medical
1400 Veterans of Foreign Wars P
West Roxbury, MA 02132; (617) 3
ext. 5650

Michigan

Fiscal Officer, Allen Park Medical
Allen Park, MI 48101; (313) 562-60
535

Fiscal Officer, Ann Arbor Medical
2215 Fuller Road, Ann Arbor, MI
(313) 769-7100 ext. 288/289

Fiscal Officer, Battle Creek Medical
Battle Creek, MI 49016; (616) 9
ext. 3566

Grand Rapids Outpatient Clinic Sub

Send to: Fiscal Officer, VA Medical
Battle Creek, MI 49016; (616) 9
ext. 3566

Fiscal Officer, Detroit Regional Off
Michigan Avenue, Detroit, MI 4822
226-4190

Fiscal Officer, Iron Mountain
Center, Iron Mountain, MI 4980
774-3300 ext. 301

Fiscal Officer, Saginaw Medical
1500 Weiss Street, Saginaw, MI
(517) 793-2340 ext. 270

Minnesota

Fiscal Officer, Minneapolis Medical
54th & 48th Avenue, South, Minne
MN 55417; (612) 725-6767 ext. 6311

Fiscal Officer, St. Cloud Medical Cen
Cloud, MN 56301; (612) 252-1600 ex

Fiscal Officer, St. Paul Center (R
Office), Federal Bldg., Ft. Snelli
Paul, MN 55111; (612) 725-4075

Jurisdiction over the counties of
Beltrami, Clay, Clearwater, Kittso
of the Woods, Mahnomen, M
Normam, Otter Tail, Pennington,
Red Lake, Roseau and Wilkin is al
to the Fargo, North Dakota Center.

St. Paul National Cemetery Area Off

Send to: Fiscal Officer, VA Medical
54th & 48th Avenue, South, Minne
MN 55417; (612) 725-6767 ext. 6311

St. Paul Data Processing Center

Send to: Fiscal Officer, VA Center,
Bldg., Ft. Snelling, St. Paul, MN
(612) 725-4075

St. Paul Outpatient Clinic

Send to: Fiscal Officer, VA Medical Center, 54th & 48th Avenue, South, Minneapolis MN 55417; (612) 725-6767 ext. 6311

Mississippi

Biloxi National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Biloxi, MS 39531; (601) 863-1972 ext. 225
Fiscal Officer, Biloxi Medical Center, Biloxi, MS 39531, (601) 863-1972 ext. 225
Corinth National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104; (901) 523-8990
Fiscal Officer, Gulfport Medical Center, Gulfport, MS 39601; (601) 863-1972 ext. 225
Fiscal Officer, Jackson Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216; (601) 362-4471 ext. 1471
Jackson Regional Office
Send to: VA Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216; (601) 362-4471 ext. 1471

Process for VA service-connected benefits should also be sent to the Jackson Medical Center, rather than to the Jackson Regional Office.

Natchez National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216; (601) 362-4471 ext. 1471

Missouri

Fiscal Officer, Columbia Medical Center, 800 Stadium Road, Columbia, MO 65201; (314) 443-2511
Jefferson City National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, 800 Stadium Road, Columbia, MO 65201; (314) 443-2511
Fiscal Officer, Kansas City Medical Center, 4801 Linwood Blvd., Kansas City, MO 64128; (816) 861-4700
Fiscal Officer, Poplar Bluff Medical Center, Poplar Bluff, MO 63901; (314) 686-4151
St. Louis National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125; (314) 894-4631
Fiscal Officer, St. Louis Regional Office, 1520 Market Street, St. Louis, MO 63103; (314) 435-5112
St. Louis Veterans Canteen Service Field Office
Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125; (314) 894-4631
Fiscal Officer, St. Louis Medical Center, St. Louis, MO 63125; (314) 894-4631
St. Louis Records Processing Center
Send to: Fiscal Officer, VA Regional Office, 1520 Market Street, St. Louis, MO 63103; (314) 425-5112
Springfield National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701; (501) 443-4301

Montana

Fiscal Officer, Fort Harrison Medical & Regional Office Center, Fort Harrison, MT 59636; (406) 442-6410 ext. 329/326
Fiscal Officer, Miles City Medical Center, Miles City, MT 59301; (406) 232-3060

Nebraska

Fiscal Officer, Grand Island Medical Center, Grand Island, NE 68801; (308) 382-3660 ext. 244
Fiscal Officer, Lincoln Regional Office, 100 Centennial Mall North, Lincoln, NE 68508; (402) 471-5041
Fiscal Officer, Lincoln Medical Center, 600 South 70th Street, Lincoln, NE 68510; (402) 489-3802 ext. 332
Maxwell National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Grand Island, NE 68801; (308) 382-3660 ext. 244
Fiscal Officer, Omaha Medical Center, 4101 Woolworth Avenue, Omaha, NE 68105; (402) 346-8800

Nevada

Las Vegas Outpatient Clinic
Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520; (702) 786-7200 ext. 244
Fiscal Officer, Reno Regional Office, 1201 Terminal Way, Reno, NV 89520; (702) 784-5637

Jurisdiction over the following counties in California: Alpine, Lassen, Modoc and Mono.

Fiscal Officer, Reno Medical Center, 1000 Locust Street, Reno, Nevada 89520; (702) 786-7200 ext. 244
Henderson Outpatient Clinic
Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520; (702) 786-7200 ext. 244

New Hampshire

Fiscal Officer, Manchester Regional Office, 275 Chestnut Street, Manchester, NH 03103; (603) 666-7638
Fiscal Officer, Manchester Medical Center, 718 Smyth Road, Manchester, NH 03104; (603) 624-4366

New Jersey

Beverly National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104; (215) 382-2400 ext. 291/292
Fiscal Officer, East Orange Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019; (201) 676-1000 ext. 525
Fiscal Officer, Lyons Medical Center, Lyons, NJ 07939; (201) 647-0180 ext. 372
Newark Outpatient Clinic

Send to: Fiscal Officer, VA Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019 (201) 676-1000 ext 525

Fiscal Officer, Newark Regional Office, 20 Washington Place, Newark, NJ 07102; (201) 645-3508

Salem National Cemetery Area Office

Send to: Fiscal Officer, VA Center, 1601 Kirkwood Highway, Wilmington, DE 19805; (302) 994-2511

Fiscal Officer, Somerville Supply Depot, Somerville, NJ 08876; (201) 725-2540

New Mexico

Fiscal Officer, Albuquerque Regional Office, 500 Gold Avenue SW., Albuquerque, NM 87102; (505) 766-2204

Fiscal Officer, Albuquerque Medical Center, 2100 Ridgecrest Drive SE., Albuquerque, NM 87108; (505) 265-1711

Ft. Bayard National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 2100 Ridgecrest Drive SE., Albuquerque, NM 87108; (505) 265-1711

Santa Fe National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 2100 Ridgecrest Drive SE., Albuquerque, NM 87108, (505) 265-1711

New York

Fiscal Officer, Albany Medical Center, Albany, NY 12208; (518) 462-3311 ext. 355

Albany VA Office

Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue, New York, NY 10001; (212) 620-6293

Fiscal Officer, Batavia Medical Center, Batavia, NY 14020; (716) 343-7500 ext. 215

Fiscal Officer, Bath Medical Center, Bath, NY 14810; (607) 776-2111

Bath National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Bath, NY 14810, (607) 776-2111

Fiscal Officer, Bronx Medical Center, 130 West Kingsbridge Road, Bronx, NY 10468; (212) 584-9000

Fiscal Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209; (212) 836-6600

Brooklyn National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209; (212) 836-6600

Brooklyn Outpatient Clinic

Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn NY 11209; (212) 836-6600

Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202; (716) 846-5251

Jurisdiction over all counties in New York not listed under the New York Regional Office.

Fiscal Officer, Buffalo Medical Center, 3495 Bailey Avenue, Buffalo, NY 14215; (716) 834-9200

Calverton National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768; (516) 261-4400 ext. 2462/2463

Fiscal Officer, Canandaigua Medical Center, Canandaigua, NY 14424; (716) 394-2000 ext. 336

Fiscal Officer, Castle Point Medical Center, Castle Point, NY 12511; (914) 831-2000 ext. 322

Elmira National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Bath, NY 14810; (607) 776-2111

Farmingdale National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768; (516) 261-4400 ext. 2462/2463

Fiscal Officer, Montrose Medical Center, Montrose, NY 10548; (914) 737-4400 ext. 463

Fiscal Officer, New York Regional Office 252 Seventh Avenue at 24th Street, New York, NY 10001; (212) 620-6293

Jurisdiction over the following counties in New York: Albany, Bronx, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Kings Montgomery, Nassau, New York, Orange Otsego, Putnam, Queens, Rensselaer Richmond, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Ulster Warren, Washington and Westchester.

New York Prosthetics Center

Send to: Fiscal Officer, VA Regional Office 252 Seventh Avenue, New York, NY 10001 (212) 620-6293

New York Veterans Canteen Service Fiel Office

Send to: Fiscal Officer, VA Medical Center First Avenue at East 24th Street, New York, NY 10010; (212) 686-7500

Fiscal Officer, New York Medical Center First Avenue at East 24th Street, New York, NY 10010; (212) 686-7500

New York Outpatient Clinic

Send to: Fiscal Officer, VA Medical Center First Avenue at East 24th Street, New York, NY 10010; (212) 686-7500

Fiscal Officer, Northport Medical Center Northport, NY 11768; (516) 261-4400 ext 2462/2463

Rochester VA Office

Send to: Fiscal Officer, VA Regional Office 111 West Huron Street, Buffalo, NY 14202; (716) 846-5251

Rochester Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center Batavia, NY 14020; (716) 343-7500 ext. 21

Fiscal Officer, Syracuse Medical Center Irving Avenue & University Place, Syracuse, NY 13210; (315) 476-7461

Syracuse VA Office

Send to: Fiscal Officer, VA Regional Office 111 West Huron Street, Buffalo, NY 14202; (716) 846-5251

North Carolina

Fiscal Officer, Asheville Medical Center, Asheville, NC 28805; (704) 298-7911 ext. 374

Fiscal Officer, Durham Medical Center, 508 Fulton Street, Durham, NC 27705; (919) 286-0411 ext. 6469

Fiscal Officer, Fayetteville Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301; (919) 488-2120

New Bern National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301; (919) 488-2120

Raleigh National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 508 Fulton Street, Durham, NC 27705; (919) 286-0411 ext. 6469

Fiscal Officer, Salisbury Medical Center, Salisbury, NC 28144; (704) 636-2351

Salisbury National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144; (704) 636-2351

Wilmington National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center 2300 Ramsey Street, Wilmington, NC 28301; (919) 488-2120

Fiscal Officer, Winston-Salem Regional Office, 251 North Main Street, Winston-Salem, NC 27102; (919) 761-3513

Winston-Salem Outpatient Clinic

Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144; (704) 636-2351

North Dakota

Fiscal Officer, Fargo Medical and Regional Office Center, 21st & Elm, Fargo, ND 58102; (701) 232-3241 ext. 249

See the listing under the St. Paul, Minnesota Center for the names of the counties in Minnesota which come under the jurisdiction of the Fargo, North Dakota Center.

Ohio

Fiscal Officer, Chillicothe Medical Center 17273 State Route 104, Chillicothe, OH 45601; (614) 773-1141 ext. 203

Fiscal Officer, Cincinnati Medical Center, 3200 Vine Street, Cincinnati, OH 45220; (513) 559-5040 ext. 4113

Cincinnati VA Office

Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199; (216) 522-3540

Fiscal Officer, Cleveland Regional Office, 1240 East Ninth Street, Cleveland, OH 44199; (216) 522-3540

Fiscal Officer, Cleveland Medical Center, 10710 East Boulevard, Cleveland, OH 44106; (216) 526-3030 ext. 521

Fiscal Officer, Columbus Outpatient Clinic, 456 Clinic Drive, Columbus, OH 43210; (614) 469-6712

Columbus VA Office

Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199; (216) 522-3540

Fiscal Officer, Dayton Medical Center, Dayton, OH 45428; (513) 268-6511 ext. 356

Dayton National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Dayton, OH 45428; (513) 268-6511 ext. 356

Oklahoma

Fort Gibson National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Memorial Station, Honor Heights Drive, Muskogee, OK 74401; (918) 683-3261 ext. 392

Fiscal Officer, Muskogee Regional Office, 125 South Main Street, Muskogee, OK 74401; (918) 687-2520

Fiscal Officer, Muskogee Medical Center, Memorial Station, Honor Heights Drive, Muskogee, OK 74401; (918) 683-3261 ext. 392

Fiscal Officer, Oklahoma City Medical Center, 921 Northeast 13th Street, Oklahoma City, OK 73104; (405) 272-9876 ext. 500

Oklahoma City VA Office

Send to: Fiscal Officer, VA Regional Office, 125 South Main Street, Muskogee, OK 74401; (918) 687-2520

Oregon

Portland National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201; (503) 222-9221 ext. 377

Fiscal Officer, Portland Regional Office, 1220 SW 3rd Avenue, Portland, OR 97204; (503) 221-3040

Fiscal Officer, Portland Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201; (503) 222-9221 ext. 377

Portland Outpatient Clinic

Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201; (503) 222-9221 ext. 377

Fiscal Officer, Roseburg Medical Center, Roseburg, OR 97470; (503) 672-4411

Roseburg National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Roseburg, OR 97470; (503) 672-4411

Fiscal Officer, White City Domiciliary, White City, OR 97501; (503) 826-2111 ext. 241

White City National Cemetery Area Office

Send to: Fiscal Officer, VA Domiciliary, White City, OR 97501; (503) 826-2111 ext. 241

Pennsylvania

Fiscal Officer, Altoona Medical Center, Altoona, PA 16603; (814) 943-8164

Annville National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042; (717) 272-6621 ext. 229

Fiscal Officer, Butler Medical Center, Butler, PA 16001; (412) 287-4781

Fiscal Officer, Coatesville Medical Center, Coatesville, PA 19320; (215) 384-7711 ext. 342

Fiscal Officer, Erie Medical Center, 135 East 38th Street, Erie, PA 16501; (814) 868-8661

Harrisburg Outpatient Clinic Substation
Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042; (717) 272-6621 ext. 229

Fiscal Officer, Lebanon Medical Center, Lebanon, PA 17042; (717) 272-6621 ext. 229

Fiscal Officer, Philadelphia Center (Regional Office), P.O. Box 8079, Philadelphia, PA 19101; (215) 951-5321

Jurisdiction over the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York.

Philadelphia Data Processing Center
Send to: Fiscal Officer, VA Center, P.O. Box 8079, Philadelphia, PA 19101; (215) 951-5321

Philadelphia National Cemetery Area Office
Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104; (215) 382-2400 ext. 291/292

Philadelphia Outpatient Clinic
Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104; (215) 382-2400 ext. 291/292

Fiscal Officer, Philadelphia Medical Center, University & Woodland Avenues, Philadelphia, PA 19104; (215) 382-2400 ext. 291/292

Fiscal Officer, Pittsburgh Regional Office, 1000 Liberty Avenue, Pittsburgh, PA 15222; (412) 644-6640

Jurisdiction over all of the counties in Pennsylvania that are not listed under the Philadelphia Center (Regional Office) and jurisdiction over the following counties in West Virginia: Brooke, Hancock, Marshall and Ohio.

Fiscal Officer, Pittsburgh Medical Center, Highland Drive, Pittsburgh, PA 15206; (412) 363-4900 ext. 235

Fiscal Officer, Pittsburgh Medical Center, University Drive C, Pittsburgh, PA 15240; (412) 683-3000 ext. 652/675

Pittsburgh Outpatient Clinic
Send to: Fiscal Officer, VA Medical Center, University Drive C, Pittsburgh, PA 15240; (412) 683-3000 ext. 652/675

Fiscal Officer, Wilkes-Barre Medical Center, 1111 East End Blvd., Wilkes-Barre, PA 18711; (717) 824-3521 ext. 247

Philippines

1. Manila Regional Office—Outpatient Clinic
2. Manila Medical and Regional Office Center

For either of the above, send to: Director U.S. Veterans Adminstration, APO, San Francisco, CA 96528; 59-80-11 Local 2574

Puerto Rico

Bayamon National Cemetery Area Office
Send to: Fiscal Officer, VA Center, GPO Box 4867, San Juan, PR 00936; (809) 763-0275

Hato Rey Medical and Regional Office Center
Send to: Fiscal Officer, VA Center, GPO Box 4867, San Juan, PR 00936; (809) 763-0275

Mayaguez Outpatient Clinic Substation
Send to: Fiscal Officer, VA Center, GPO Box 4867, San Juan, PR 00936; (809) 763-0275

Ponce Outpatient Clinic Substation
Send to: Fiscal Officer, VA Center, GPO Box 4867, San Juan, PR 00936; (809) 763-0275

Rio Piedras Medical and Regional Office Center
Send to: Fiscal Officer, VA Center, GPO Box 4867, San Juan, PR 00936; (809) 763-0275

Rhode Island

Fiscal Officer, Providence Regional Office 321 South Main Street, Providence, R 02903; (401) 528-4480

Jurisdiction over the following towns and counties in Massachusetts: All towns i Bristol County except Mansfield and Easton, the towns of Lakeville, Middleboro, Carver, Rochester, Mattapoisett Marion, and Wareham in Plymouth County; and the counties of Dukes, Nantucket and Barnstable.

Fiscal Officer, Providence Medical Center Davis Park, Providence, RI 02908; (401 273-7100

South Carolina

Beaufort National Cemetary Area Office
Send to: Fiscal Officer, VA Medical Center 109 Bee Street, Charleston, SC 29403 (803) 577-5011 ext. 222

Fiscal Officer, Charleston Medical Center, 109 Bee Street, Charleston, SC 29403; (803) 577-5011 ext. 222

Fiscal Officer, Columbia Regional Office, 1801 Assembly Street, Columbia, SC 29201; (803) 765-5210

Fiscal Officer, Columbia Medical Center, Columbia, SC 29201; (803) 776-4000 ext. 149

Florence National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201; (803) 776-4000 ext. 149

Greenville Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201; (803) 776-4000 ext. 149

South Dakota

Fort Meade National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741; (605) 347-2511 ext. 272

Fort Meade Medical Center

Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741; (605) 347-2511 ext. 272

Hot Springs National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Hot Springs, SD 57747; (605) 745-4101 ext. 246

Fiscal Officer, Hot Springs Medical Center, Hot Springs, SD 57747; (605) 745-4101 ext. 246

Fiscal Officer, Sioux Falls Medical Center, 2501 West 22nd St., Sioux Falls, SD 57101; (605) 336-3230 ext. 201

Sioux Falls Regional Office

Send to: VA Medical Center, 2501 West 22nd St., Sioux Falls, SD 57101; (605) 336-3230 ext. 201

Process for VA service-connected benefits should also be sent to the Sioux Falls Medical Center, rather than to the Sioux Falls Regional Office.

Sturgis National Cemetery Area Office,

Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741; (605) 347-2511 ext. 272

Tennessee

Chattanooga Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37203; (615) 327-4651 ext. 553

Chattanooga National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Murfreesboro, TN 37130; (615) 893-1360 ext. 346

Knoxville National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Mountain Home, IN 37684; (615) 926-1171

Knoxville Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, 1320 24th Avenue, South, Knoxville, TN 37203; (615) 327-4651 ext. 553

Madison National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 1320 24th Avenue, South, Nashville, TN 37203; (615) 327-4651 ext. 553

Fiscal Officer, Memphis Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104; (901) 523-8990

Memphis National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104; (901) 523-8990

Fiscal Officer, Mountain Home Medical Center, Mountain Home, TN 37684; (615) 926-1171

Mountain Home National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684; (615) 926-1171

Fiscal Officer, Murfreesboro Medical Center, Murfreesboro, TN 37130; (615) 893-1360 ext. 346

Fiscal Officer, Nashville Regional Office, 110 Ninth Avenue, South, Nashville, TN 37203; (615) 251-5352

Fiscal Officer, Medical Center, 1310 24th Avenue, South, Nashville, TN 37203; (615) 327-4751 ext. 553

Texas

Fiscal Officer, Amarillo Medical Center, 6010 Amarillo Blvd., W., Amarillo, TX 79106; (806) 355-9703 ext. 216

Fiscal Officer, Austin Data Processing Center, 1615 East Woodward Street, Austin, TX 78772; (512) 397-7366

Beaumont Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211; (713) 795-4411

Fiscal Officer, Big Spring Medical Center, Big Spring, TX 79720; (915) 263-7361 ext. 327

Fiscal Officer, Bonham Medical Center, Bonham, TX 75418; (214) 583-2111

Corpus Christi Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284; (512) 696-9660 ext. 6301

Fiscal Officer, Dallas Medical Center, 4500 South Lancaster Road, Dallas, TX 75216; (214) 376-5451

Dallas VA Office

Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76710; (817) 756-6511 ext. 635

Fiscal Officer, El Paso Outpatient Clinic 5919 Brook Hollow Drive, El Paso, TX 79925; (915) 543-7960/7961

Fort Bliss National Cemetery Area Office

Send to: Fiscal Officer, VA Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925; (915) 543-7960/7961

Fiscal Officer, Houston Regional Office, 2515 Murworth Drive, Houston, TX 77054; (713) 226-4185

Jurisdiction over the country of Mexico and the following counties in Texas: Angelina, Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Blanco, Brazoria, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, Crockett, DeWitt, Dimmitt, Duval, Edwards, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Lavaca, Liberty, Live Oak, McCulloch, McMullen, Mason, Matagorda, Maverick, Medina, Menard, Montgomery, Necogdoches, Newton, Nueces, Orange, Pecos, Polk, Real, Refugio, Sabine, San Augustine, San Jacinto, San Patricio, Schleicher, Shelby, Starr, Sutton, Terrell, Trinity, Tyler, Uivalde, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Zapata and Zavala.

Fiscal Officer, Houston Medical Center, 2002 Holcombe Blvd., Houston, TX 77211; (713) 795-4411

Houston National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211; (713) 795-4411

Fiscal Officer, Kerrville Medical Center, Kerrville, TX 78028; (512) 896-2020 ext. 215

Kerrville National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Kerrville, TX 78028; (512) 896-2020 ext. 215

Lubbock VA Office

Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76710; (817) 756-6511 ext. 635

Fiscal Officer, Lubbock Outpatient Clinic, 1205 Texas Avenue, Lubbock, TX 79401; (806) 762-7209

Fiscal Officer, Marlin Medical Center, Marlin, TX 76661; (817) 883-3511 ext. 224

McAllen Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284; (512) 696-9660 ext. 6301

Fiscal Officer, San Antonio Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284; (512) 696-9660 ext. 6301

San Antonio VA Office

Send to: Fiscal Officer, VA Regional Office, 2515 Murworth Drive, Houston, TX 77054; (713) 226-4185

San Antonio National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284; (512) 696-9660 ext. 6301

San Antonio National Cemetery Area Office (Fort Sam Houston)

Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284; (512) 696-9660 ext. 6301

Fiscal Officer, Temple Medical Center, Temple, TX 76501; (817) 778-4811

Fiscal Officer, Waco Regional Office, 1400 North Valley Mills Drive, Waco, TX 76710; (817) 756-6511 ext. 635

Jurisdiction over all counties in Texas not listed under the Houston Regional Office.

Fiscal Officer, Waco Medical Center, Memorial Drive, Waco, TX 76703; (817) 752-6581

Waco Outpatient Clinic

Send to: Fiscal Officer, VA Medical Center, Memorial Drive, Waco, TX 76703; (817) 752-6581

Utah

Fiscal Officer, Salt Lake City Regional Office, 125 South State Street, Salt Lake City, Utah 84138; (801) 525-5945

Fiscal Officer, Salt Lake City Medical Center, 500 Foothill Blvd., Salt Lake City, Utah 84148; (801) 582-1565/1520

Vermont

Fiscal Officer, White River Junction Medical and Regional Office Center, White River Junction, Vermont 05001; (802) 295-9363

Virginia

Alexandria National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 50 Irving Street NW., Washington, D.C. 20422; (202) 389-7593

Culpeper National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401; (304) 263-0811 ext. 280

Danville National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Salem, VA 24153; (703) 982-2463

Hopewell National Cemetery Area Office

Send to: Fiscal Officer VA Medical Center 1201 Broad Rock Road, Richmond, VA 23249; (804) 231-9011 ext. 205

Leesburg National Cemetery Area Office

Send to: Fiscal Officer VA Medical Center, 50 Irving Street NW., Washington, D.C. 20422; (202) 389-7593

Mechanicsville National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249; (804) 231-9011 ext. 205

Fiscal Officer, Hampton Medical Center, Hampton, VA 23667; (804) 722-9961

Hampton National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Hampton, VA 23667; (804) 722-9961

Quantico National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, D.C. 20422; (202) 389-7593

Fiscal Officer, Richmond Medical Center, 1201 Broad Rock Road, Richmond, VA 23249; (804) 231-9011 ext. 205

Richmond National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249; (804) 231-9011 ext. 205

Fiscal Officer, Roanoke Regional Office, 210 Franklin Road, SW., Roanoke, VA 24011; (703) 982-6116

Jurisdiction over Fairfax and Arlington Counties and the cities of Alexandria, Fairfax, and Falls Church is allocated to the Washington, D.C. Regional Office.

Fiscal Officer, Salem Medical Center, Salem, VA 24153; (703) 982-2463

Sandston National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249; (804) 231-9011 ext. 205

Staunton National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Salem, VA 24135; (703) 982-2463

Winchester National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401; (304) 263-0811 ext. 280

Washington

Fiscal Officer, American Lake Medical Center, Tacoma, WA 98493; (206) 582-8440 ext. 303

Fiscal Officer, Seattle Regional Office, 915 Second Avenue, Seattle, WA 98174; (206) 442-5025

Fiscal Officer, Seattle Medical Center, 4435 Beacon Avenue, South, Seattle, WA 98108; (206) 762-1016 ext. 286

Seattle Outpatient Clinic

Send to: Fiscal Officer, VA Medical Center, 4435 Beacon Avenue, South, Seattle, WA 98108; (206) 762-1016 ext. 286

Fiscal Officer, Spokane Medical Center, North 4815 Assembly Street, Spokane, WA 99208; (509) 328-4521

Fiscal Officer, Vancouver Medical Center, Vancouver, WA 98661; (206) 696-4061 ext. 331

Fiscal Officer, Walla Walla Medical Center, 77 Wainwright Drive, Walla Walla, WA 99362; (509) 525-5200

West Virginia

Fiscal Officer, Beckley Medical Center, 200 Veterans Avenue, Beckley, WV 25801; (304) 255-2121

Fiscal Officer, Clarksburg Medical Center, Clarksburg, WV 26301; (304) 623-3461 ext. 335

Grafton National Cemetery Area Office

Send to: Fiscal Officer, VA Medical Center, Clarksburg, WV 26301; (304) 623-3461 ext. 335

Fiscal Officer, Huntington Regional Office, 502 Eighth Street, Huntington, WV 25701; (304) 529-5477

Jurisdiction over the counties of Brooke, Hancock, Marshall and Ohio is allocated to the Pittsburgh, Pennsylvania Regional Office.

Fiscal Officer, Huntington Medical Center, 1540 Spring Valley Drive, Huntington, WV 25704; (304) 429-6741 ext. 327

Fiscal Officer, Martinsburg Medical Center, Martinsburg, WV 25401; (304) 263-0811 ext. 280

Wheeling Outpatient Clinic Substation

Send to: Fiscal Officer, VA Medical Center, University Drive C, Pittsburgh, PA 15240; (412) 363-4900 ext. 235

Wisconsin

Fiscal Officer, Madison Medical Center, 2500 Overlook Terrace, Madison, WI 53705; (608) 256-1901 ext. 381

Fiscal Officer, Milwaukee Regional Office, 342 North Water Street, Milwaukee, WI 53202; (414) 291-1201

Fiscal Officer, Tomah Medical Center, Tomah, WI 54660; (608) 372-3971 ext. 204

Fiscal Officer, Wood Medical Center, 5000 West National Avenue, Wood, WI 53193; (414) 384-2000 ext. 2591

Wood National Cemetery Area Office

Send to: Fiscal Office, VA Medical Center, 5000 West National Avenue, Wood, WI 53193; (414) 384-2000 ext. 2591

Wyoming

Fiscal Officer, Cheyenne Medical & Regional Office Center, 2360 East Pershing Blvd., Cheyenne, WY 82001; (307) 778-7550 ext. 351

Fiscal Officer, Sheridan Medical Center, Sheridan, WY 82801; (307) 672-3473.

III. The United States Postal Service and the Postal Rate Commission

UNITED STATES POSTAL SERVICE

Service of process may be made on the postmaster or head of the installation where the employee works. However, if the installation where the employee works cannot be determined, service of process may be made on the appropriate Regional Counsel. The geographic areas served by the Regional Counsels and their addresses are as follows:

Regional Counsel, Northeast Region, U.S. Postal Service, 1633 Broadway, New York, NY 10098; (212) 974-8531

Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, northern New Jersey (ZIP codes beginning with 070-079 and 088-089), New

York (ZIP codes beginning with 090-098 and 100-129), and the Carribean Islands.

Regional Counsel, Eastern Region, U.S. Postal Service, 1845 Walnut Street, P.O. Box 8601, Philadelphia, PA 19101; (215) 597-9715

Serving: The District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, West Virginia, southern New Jersey (ZIP codes beginning with 080-087) and New York (ZIP codes beginning with 130-149)

Regional Counsel, Southern Region, U.S. Postal Service, 1407 Union Avenue, Memphis, TN 38166; (901) 534-4411

Serving: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee and Texas

Regional Counsel, Central Region, U.S. Postal Service, 433 Van Buren Street, Chicago, IL 60699; (212) 886-3175

Serving: Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin

Regional Counsel, Western Region, U.S. Postal Service, 850 Cherry Avenue, San Bruno, CA 94099; (415) 876-9225

Serving: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and the Pacific Islands including the Trust Territory

Processing of garnishments will be substantially expedited by serving the postmaster or installation head rather than the Regional Counsel.

POSTAL RATE COMMISSION

Chief Administrative Officer, Postal Rate Commission, 2000 L Street NW., Washington, D.C. 20268; (202) 254-3880

IV. The District of Columbia, American Samoa, Guam, and the Virgin Islands

THE DISTRICT OF COLUMBIA

Assistant City Administrator for Financial Management, The District Building, Room 412, 14th and Pennsylvania Avenue, NW., Washington, D.C. 20004; (202) 727-6979

AMERICAN SAMOA

Director of Administrative Service, American Samoa Government, Pago Pago, American Samoa 96799; (684) 633-4155

GUAM

Attorney General, P.O. Box DA, Agana, Guam 96910; 472-6841 (Country Code 671)

THE VIRGIN ISLANDS

Attorney General, P.O. Box 280, St. Thomas, VI 00801; (809) 774-1163

V. Instrumentality

SMITHSONIAN INSTITUTION

For service of process in garnishment proceedings for child support and/or alimony of present Smithsonian Institution employees:

General Counsel, The Smithsonian Institution, Room 408, 1000 Jefferson Drive, SW., Washington, D.C. 20560; (202) 381-5866

For service of process in garnishment proceedings for child support and/or alimony involving retirement annuities of former trust fund employees of the Smithsonian Institution:

General Counsel, Teachers Insurance and Annuity Association of America, College Retirement Equity Fund (TIAA/CREF), 730 Third Avenue, New York, NY 10017; (212) 490-9000.

[48 FR 26281, June 7, 1983]

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart A—[Reserved]

Subpart B—Cost of Living Allowance and Post Differential—Nonforeign Areas

Sec.

591.201 Definitions.
591.202 Areas covered.
591.203 Agencies and employees covered.
591.204 Exclusion of certain employees.
591.205 Establishment of rates for areas covered.
591.206 Allowance index table.
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APPENDIX B OF SUBPART B—PLACES AND RATES AT WHICH DIFFERENTIALS SHALL BE PAID

Subpart C—Allowance Based on Duty at Remote Worksites

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591.302 Coverage.
591.303 Responsibilities of agencies and the Office of Personnel Management.
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591.308 Relationship to additional pay payable under other statutes.
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APPENDIX A OF SUBPART C—DAILY TRANSPORTATION ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY PRIVATE MOTOR VEHICLE TO REMOTE DUTY POSTS
APPENDIX B OF SUBPART C—DAILY INCONVENIENCE OR HARDSHIP ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY MOTOR VEHICLE TO REMOTE DUTY POSTS

Subpart A—[Reserved]

Subpart B—Cost of Living Allowance and Post Differential—Nonforeign Areas

AUTHORITY: 5 U.S.C. 5941; E.O. 10,000, 3 CFR, 1943-1948 Comp., p. 792.

SOURCE: 41 FR 51579, Nov. 23, 1976, unless otherwise noted.

§ 591.201 Definitions.

In this subpart. (a) "Date of arrival" means the beginning of business on the workday of the employee's arrival at the post, or other designated place. When the employee's arrival is on a nonworkday, "date of arrival" means the beginning of business on the first workday following arrival.

(b) "Date of departure" means the close of business on the workday of the employee's departure from the post or other designated place. When the employee's departure is on a nonworkday, "date of departure" means the close of business on the last workday preceding departure.

(c) "Day or calendar day" means any day of the year. Fractional days are considered whole days.

(d) "Detail" means the temporary assignment or temporary duty of an employee away from his post of regular assignment, including all periods of leave while serving at the post of detail.

(e) "Nonforeign allowance" or "allowance" means a cost of living allowance established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a post in a nonforeign area where living costs are substantially higher than in the District of Columbia.

(f) "Nonforeign area" means the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, territories and possessions of the United States, and such additional areas located outside the continental United States as the Secretary of State shall designate as being within the scope of Part II of Executive Order 10,000, as amended.

(g) "Nonforeign differential" or "differential" means a post differential established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a post in a nonforeign area when conditions of environment differ substantially from conditions of environment in the Continental United States and warrant its payment as a recruitment incentive.

(h) "On assignment" or "on transfer" at a post of duty means officially occupying a position located at the post, geographically and organizationally, and having official headquarters at the post for travel and other administrative purposes.

(i) "Rate of basic pay" means the rate of pay fixed by statute for the position held by an individual, before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differentials.

§ 591.202 Areas covered.

The following areas are subject to this subpart:

Alaska (including all the Aleutian Islands east of longitude 167 degrees east of Greenwich)

American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island)
Canton and Enderbury Islands
Commonwealth of Puerto Rico
Guam
Hawaii (including Ocean or Kure Island)
Howland, Baker, and Jarvis Islands
Johnston or Cornwallis Island, and Sand Island
Kingman Reef
Midway Islands
Navassaa Island
Palmyra Island
Virgin Islands of the United States
Wake Island

Any small guano islands, rocks, or keys which, in pursuance of action taken under the Act of Congress, August 18, 1856, are considered as appertaining to the United States.

Any other islands to which the United States Government reserves claim, such as Christmas Island.

§ 591.203 Agencies and employees covered.

This subpart applies to civilian employees whose rates of basic pay are fixed by statute and who are employed by an executive department, independent establishment, or wholly-owned Government corporation.

§ 591.204 Exclusion of certain employees.

(a) *Employees covered by other statutes.* This subpart does not apply to employees in the Panama Canal Zone whose rates of basic pay are fixed by statute, or to any other groups of employees for whom allowances and differentials for service outside the continental United States or in Alaska are otherwise specifically authorized by statute.

(b) *Governors of territories.* A department or agency shall not apply an allowance or differential to a governor of a territory in a nonforeign area, except that on the specific request of the department or agency concerned, OPM may authorize the payment of a differential to a governor whose pay is fixed under chapter 51 and subchapter III of chapter 53, title 5, United States Code, if he is otherwise eligible to receive a differential and OPM determines that a payment is warranted under the circumstances.

§ 591.205 Establishment of rates for areas covered.

The Office of Personnel Management establishes the allowance and differential rates for each area covered. The department or agency concerned shall submit to OPM in writing requests for the establishment of rates of allowances or differentials for places for which they have not been established by this subpart.

§ 591.206 Allowance index table.

Cost of living survey findings shall be used to calculate a comparative cost index between Washington, D.C. and each area covered. This index shall determine the amount of allowance, expressed as a percentage of employee's basic pay, to be paid to eligible employees as set forth in the following table:

COMPARATIVE COST INDEX AND ALLOWANCE TABLE

Cost index range	*Percentage allowance rate*
Less than 105.0	0
105.0 to 106.2	5
106.3 to 108.7	7.5
108.8 to 111.2	10
111.3 to 113.7	12.5
113.8 to 116.2	15
116.3 to 118.7	17.5
118.8 to 121.2	20
121.3 to 123.7	22.5
123.8 and over	25

§ 591.207 Places and rates at which allowances shall be paid.

Allowances are authorized to be paid in consideration of relative living cost differences between an area covered and the Washington, D.C., area and differences in goods and services available, and the manner of living of persons employed in the area concerned in positions comparable to those of United States employees in the area. A listing showing the places and rates at which allowances shall be paid is set out as Appendix A to this subpart and is incorporated in and made part of this section.

§ 591.208 Deductions from allowances.

Deductions from allowances are made where warranted because of Federal housing or special purchasing privileges in accordance with the provisions of section 205(b)(2) of Executive Order 10,000, as amended. The listing in Appendix A to this subpart shows the allowance rates, which includes the appropriate deduction, for each category of affected employees.

§ 591.209 Places and rates at which differentials shall be paid.

Differential rates are based on (a) extraordinarily difficult living conditions, (b) excessive physical hardship, or (c) notably unhealthful conditions. A listing showing the places and rates at which differentials shall be paid is set out as Appendix B to this subpart and is incorporated in and made part of this section.

§ 591.210 Payment of allowances and differentials.

(a) The allowance and differential authorized for each location shall be converted to an hourly rate, based on the employee's basic rate of pay, and shall be paid only for those hours during which the employee receives basic pay.

(b) The total amount of an allowance or a differential, or an allowance and a differential combined, paid under this subpart shall not exceed in any instance 25 percent of the rate of basic pay.

(c) Payment of an allowance or a differential shall begin as of the date of arrival at the post of duty on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. Payment of an allowance or a differential shall cease on separation, or as of the date of departure on transfer to a new post of regular assignment.

(d) Except as provided under the Fair Labor Standards Act, of 1938, as amended, an allowance or a differential shall not be included in the base used in computing overtime pay, night differential, holiday pay, retirement deductions, or any other additional pay, allowance or pay differential. An allowance or differential payment is included in an employee's regular rate of pay for computing overtime pay entitlement under the Fair Labor Standards Act.

(e) Payment of an allowance or a differential is not an equivalent increase in pay within the meaning of section 5335 of title 5, United States Code.

(f) When an employee who is en route to, or returning from, his post of regular assignment is required to perform work in an area where payment of an allowance or differential is authorized, he shall be paid the allowance or differential for his post of regular assignment while he is performing this work.

(g) Payment of an allowance at the rate prescribed for the post of regular assignment shall continue for all periods of temporary absence from the post on leave, including transit time. Payment of a differential at the rate prescribed for the post of regular assignment shall continue for the first 42 consecutive days of temporary absence from the post on leave, including transit time. Payment of allowances and differentials under this paragraph is authorized only if the employee returns to a post of regular assignment in a foreign or nonforeign area, unless

(1) The department or agency concerned determines that it is in the public interest not to return the employee to a post of regular assignment, or

(2) The department or agency concerned determines that the employee's failure to return to a post of regular assignment was due to compelling personal reasons, such as the health of the employee or his family, or to circumstances over which the employee has no control.

(h) (1) Payment of an allowance at the rate prescribed for the post of regular assignment shall continue for all periods of detail from the post including transit time, except that when an employee detailed to a foreign area post receives a differential authorized by the Department of State under section 5925 of title 5, United States Code, the payment of the allowance under this subpart will be reduced to a rate which when added to the foreign post differential rate will not result in a total rate of more than 25 percent.

(2) Payment of a differential at the rate prescribed for the post of regular assignment shall continue for the first 42 consecutive calendar days on detail from the post, including transit time, except that when the employee is detailed to a foreign area post for which the Department of State has authorized a differential under section 5925 of title 5, United States Code, but the employee may not be paid the differential because he is detailed from a post of regular assignment which is not in one of the several States or the District of Columbia, the department or agency shall pay him the differential prescribed for his post of regular assignment for the entire period of detail (including the periods of leave granted during the period of detail).

(3) When an employee other than an employee covered by the exception in paragraph (h)(2) of this section has aggregated 42 days in a pay status at a differential post, he shall thereafter be paid the differential prescribed for each post of detail, but not for any time in transit.

(4) When an employee detailed to a foreign area post receives a differential authorized by the Department of State under section 5925 of title 5, United States Code, the payment of the differential under this subpart will be reduced to a rate which when added to the foreign post differential rate will not result in a total rate of more than 25 percent.

(i) Except as provided by paragraph (h) of this section, when an employee is temporarily absent from his post of regular assignment on detail (including the periods of leave granted during the period of the detail), payment of the differential for his post of regular assignment is limited to the first 42 consecutive calendar days of the temporary absence, including transit time.

§ 591.211 Coordination of allowances and differentials.

An employee eligible to receive an allowance at a post for which both an allowance and a differential have been established shall receive the full allowance otherwise payable to him under this subpart, plus so much of the differential as will not cause the total amount paid to exceed a rate of 25 percent of his rate of basic pay.

§ 591.212 Eligibility for differential.

A department or agency shall determine employee eligibility to receive a differential as follows:

(a) In order for an employee to be eligible to receive a differential, (1) he shall be a citizen or national of the United States; (2) his residence in the area to which the differential applies, at the time of receipt thereof, shall be fairly attributable to his employment by the United States; and (3) his residence in the area over an appropriate prior period of time must not be fairly attributable to reasons other than employment by the United States or by United States firms, interests, or organizations.

(b) Subject to paragraph (a) of this section, the classes of persons eligible to receive differentials include but are not limited to:

(1) Persons recruited or transferred from outside the area to which the differential concerned is applicable, except that the department or agency concerned shall exclude from those eligible to receive a differential the spouse of an individual who is stationed, employed, or resident in the differential area when the department or agency determines that the spouse is there primarily to be near the individual.

(2) Persons employed in the area to which the differential concerned is applicable but (i) who were originally recruited from outside the area and have been in substantially continuous employment by other Federal agencies, contractors of Federal agencies, or international organizations in which the United States Government participates, and whose conditions of employment provide for their return transportation to places outside the differential area concerned; or (ii) who were at the time of employment temporarily present in the differential area concerned for purposes of travel or formal study and maintained residents outside the area during the period so present.

(3) Persons who are not normally residents of the area to which the dif-

ferential concerned is applicable and who are discharged from the military service of the United States in the area to accept employment there with an agency of the Federal Government.

§ 591.213 Periodic review.

OPM shall review from time to time, but at least annually, the places designated, the rates fixed, and the regulations in this subpart which are prescribed for payment of allowances and differentials. The purpose for the review is to make warranted changes to insure that payments under this subpart shall continue only during the continuance of conditions justifying payment of allowances and differentials and shall not in any instance exceed the amount justified. However, if program or methodology revisions would substantially reduce an established differential or allowance rate, then the rate of such additional compensation may be reduced gradually.

APPENDIX A OF SUBPART B—PLACES AND RATES AT WHICH ALLOWANCES SHALL BE PAID

This appendix lists the places where a cost of living allowance has been approved and shows the allowance rate to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage/allowance category	Index	Authorized allowance rate (percent)
State of Hawaii—1977		
Island of Oahu:		
Local retail/private housing	118.4	17.5
Local retail/Federal housing	102.3	
Commissary/PX/private housing	103.8	
Commissary/PX/Federal housing	87.7	
Commissary/PX/military housing	73.9	
Island of Kauai:		
Local retail/private housing	117.2	17.5
Local retail/Federal housing	107.2	7.5
Commissary/PX/private housing	116.7	17.5
Commissary/PX/Federal housing	106.7	7.5
Commissary/PX/military housing	89.0	
Island of Molokai:		
Local retail/private housing	115.4	15.0
Local retail/Federal housing	108.2	7.5
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	90.7	
Island of Maui and Island of Lanai:		
Local retail/private housing	112.2	12.5
Local retail/Federal housing	99.7	
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	86.2	
Island of Hawaii:		
Local retail/private housing	113.6	12.5
Local retail/Federal housing	99.8	
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	88.1	
State of Alaska—1976 [4]		
City of Anchorage and 50-mile radius:		
Local retail/private housing	129.2	25.0
Local retail/Federal housing	116.9	17.5
Commissary/PX/private housing	117.6	17.5
Commissary/PX/Federal housing	105.3	5.0
Commissary/PX/military housing	86.2	0
City of Fairbanks and 50-mile radius:		
Local retail/private housing	146.3	25.0
Local retail/Federal housing	140.3	25.0
Commissary/PX/private housing	129.7	25.0
Commissary/PX/Federal housing	123.8	25.0
Commissary/PX/military housing	90.8	0
City of Juneau and 50-mile radius:		
Local retail/private housing	126.5	25.0
Local retail/Federal housing	130.4	25.0
Commissary/PX/private housing	126.1	25.0
Commissary/PX/Federal housing	129.9	25.0
Commissary/PX/military housing	95.3	0
All other locations within Alaska, all employees	134.7	25.0
Commonwealth of Puerto Rico—1976		
San Juan Area: [1]		
Local retail/private housing	113.4	12.5
Local retail/Federal housing	109.1	10.0
Commissary/PX/private housing [2]	104.4	0
Commissary/PX/Federal housing [2]	100.1	0
Commissary/PX/military housing [2]	79.8	0
Outside San Juan Area:		
Local retail/private housing	105.4	5.0
Local retail/Federal housing	112.1	12.5
Commissary/PX/private housing [2]	97.1	0
Commissary/PX/Federal housing [2]	103.8	0
Commissary/PX/military housing [2]	77.4	0

Geographic coverage/allowance category	Index	Authorized allowance rate (percent)
Virgin Islands—1976		
St. Croix:		
Local retail/private housing	107.0	7.5
Local retail/Federal housing	97.3	0
Commissary/PX/private housing	(3)	
Commissary/PX/Federal housing	(3)	
Local retail/military housing	84.3	0
St. Thomas and St. John:		
Local retail/private housing	108.6	7.5
Local retail/Federal housing	98.5	0
Commissary/PX/private housing	(3)	
Commissary/PX/Federal housing	(3)	
Local retail/military housing	84.5	0
Island of Guam—1977		
Local retail/private housing	110.6	10.0
Local retail/Federal housing	102.4	
Commissary/PX/private housing	98.2	
Commissary/PX/Federal housing	90.0	
Commissary/PX/military housing	68.7	

[1] The "San Juan Area" is defined as the San Juan Standard Metropolitan Statistical Area. This area has been defined by the Office of Management and Budget to consist of the municipios of Canovanas, Loiza, Toa Baja, Bayamon, Guaynabo, Carolina, Trujillo Alto, San Juan, and all localities included therein. Employees whose duty stations are located in this area will receive cost of living allowances based on the rates authorized for the "San Juan" Area. All other employees will receive cost of living allowances based on the rates authorized for the "Outside San Juan" area.

[2] For allowance areas in Puerto Rico, the Commissary/PX will apply to those employees who have such purchasing privileges and whose duty stations are located within a 50-mile radius by road from a major commissary/PX facility. Currently the only facilities in Puerto Rico which qualify as "major" are Fort Buchanan and Roosevelt Roads. All employees whose duty stations are outside this 50-mile radius will receive an allowance based on the appropriate local retail rate.

[3] Where an index is "not applicable", the appropriate local retail index and rate apply depending on type of housing occupied.

[4] The results of the 1976 annual review for the State of Alaska do not include the Juneau area. It was necessary to conduct a separate survey of Juneau and as a result, the annual review findings for that location will be announced at a later date. Until that time, the 1975 index and allowance rate for Juneau will remain in effect.

DEFINITIONS OF ALLOWANCE CATEGORIES

The following definitions of the various allowance categories identified in the tables in this attachment shall be used in determining employee eligibility for the appropriate allowance rate:

Allowance category	*Definition*
Local Retail/Private Housing.	This category includes those Federal employees who purchase goods and services only from private retail establishments and who occupy housing units that are privately owned or rented.
Local Retail/Federal Housing.	This category includes those Federal employees who purchase goods and services only from private retail establishments and who occupy housing units that are owned or leased by a Federal agency.
Commissary/PX/ Private Housing.	This category includes those Federal employees who have unlimited access to military commissary and exchange facilities and who occupy housing units that are privately owned or leased.
Commissary/PX/ Federal Housing.	This category includes those Federal employees who have unlimited access to military commissary and exchange facilities and who occupy housing units that are owned or leased by a Federal agency.
Commissary/PX/ Military Housing.	This category includes those Federal employees who have unlimited access to military commissary and exchange facilities and who occupy either on-base military housing units or off-base housing for which a housing allowance is paid under the military housing program.

NOTE: Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. Identification cards are issued to each individual authorized to use the facilities and this identification would indicate any limitation on purchases. Agencies should adopt whatever methods are appropriate to obtain from employees the information needed to determine the applicable allowance category and the corresponding allowance to be paid.

(5 U.S.C. 5941; E.O. 10,000, 3 CFR 1943-48 Comp., p. 792; E.O. 11938, 3 CFR 1976 Comp., pp. 148-149)

[41 FR 51579, Nov. 23, 1976; 41 FR 53969, Dec. 10, 1976, as amended at 42 FR 54555, Oct. 7, 1977; 42 FR 64336, Dec. 23, 1977; 43 FR 12293, Mar. 24, 1978]

APPENDIX B OF SUBPART B—PLACES AND RATES AT WHICH DIFFERENTIALS SHALL BE PAID

This appendix lists the places where a post differential has been approved and shows the differential rate to be paid to eligible employees. The differential percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage	Percentage differential rate	Effective date
American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoan group east of longitude 171° west of Greenwich, together with Swains Island).	25	June 8, 1975
Canton Island	25	Do.
Christmas Island	25	Do.
Guam	20	Jan. 1, 1975
Johnston or Cornwallis Island, and Sand Island.	25	June 8, 1975
Midway Islands	25	Do.
Wake Island	25	Do.

[41 FR 51579, Nov. 23, 1976; 41 FR 52857, Dec. 2, 1976; 41 FR 53461, Dec. 7, 1976]

Subpart C—Allowance Based on Duty at Remote Worksites

AUTHORITY: 5 U.S.C. 5942; sec. 8, E.O. 11609, 3 CFR 1971-1975 Comp., p. 591; 5 U.S.C. 1104, Pub. L. 95-454, 92 Stat. 1120 and Sec. 3(5) of Pub. L. 95-454; 92 Stat. 1120.

SOURCE: 44 FR 55134, Sept. 25, 1979, unless otherwise noted.

§ 591.301 Purpose.

This subpart prescribes the regulations required by section 5942 of title 5, United States Code, for the payment of an allowance based on duty at remote worksites.

§ 591.302 Coverage.

(a) *Agencies.* This subpart applies to executive departments as defined in section 101 of title 5, United States Code, and to independent establishments as defined in section 104 of title 5, United States Code, but does not apply to Government corporations as defined in section 103 of title 5, United States Code.

(b) *Employee.* This subpart applies to each employee assigned to a permanent duty station at or within a designated remote duty post, except an employee who is a permanent or temporary resident at the remote duty post, and except foreign nationals employed at remote duty posts in foreign countries.

§ 591.303 Responsibilities of agencies and the Office of Personnel Management.

(a) Each agency is responsible for:

(1) Establishing and subsequently adjusting, in accordance with the provisions of this subpart, an allowance for each remote duty post at which the agency has employees and which meets the criteria in paragraph (a)(1) of § 591.304, as restricted by paragraph (b) of § 591.304;

(2) Advising the Office of Personnel Management of each establishment or adjustment of an allowance under paragraph (a)(1) of this section, and of the basis for such establishment or adjustment;

(3) Submitting a recommendation to the Office of Personnel Management to establish or adjust an allowance for each remote duty post at which the agency has employees and which meets the criteria in paragraph (a)(2) or (a)(3) or paragraph (c) of § 591.304; and

(4) Advising the Office of Personnel Management in a timely manner of any changes in a duty post or commuting conditions or other factors that may affect an allowance that has been authorized by the Office of Personnel Management under paragraph (b) of this section.

(b) The Office of Personnel Management is responsible for:

(1) Establishing and subsequently adjusting, in accordance with the provisions of this subpart, an allowance for each remote duty post which does not meet the criteria in paragraph (a)(1) of § 591.304, but does meet the criteria in paragraph (a)(2) or (a)(3) or paragraph (c) of § 591.304;

(2) Reviewing each establishment or adjustment of an allowance by an agency under paragraph (a)(1) of this section to determine if such establishment or adjustment is in accordance with the provisions of this subpart; and

(3) Directing the termination or adjustment of any allowance determined by the Office to be not in accordance with the provisions of this subpart, which termination or adjustment shall be implemented by the agency without delay.

(c) Each allowance which has been authorized by the Office of Personnel Management or the Civil Service Commission on or before February 1, 1979, and which is authorized for a remote duty post which meets the criteria in paragraph (a)(1) of § 591.304, shall be subject to further adjustment by the agency under paragraph (a)(1) of this section as if such allowance had been initially authorized by the agency under that paragraph.

§ 591.304 Criteria for determining remoteness.

(a) Except as provided by paragraphs (b) and (c) of this section, a duty post shall be determined to be a remote duty post for basic allowance eligibility purposes when:

(1) Normal ground transportation (e.g., automobile, train, bus) is available on a daily basis and the duty post is 50 miles, or more, one way from the nearest established community or suitable place of residence. Distance shall be computed in road or rail miles over the most direct route traveled from the center of the city, or other appropriate point for large cities or areas; or

(2) Daily commuting is impractical because the location of the duty post and available transportation are such that agency management requires employees to remain at the duty post for their workweek as a normal and continuing part of the conditions of employment; or

(3) Transportation may be accomplished only by boat, aircraft, or unusual conveyance, or under extraordinary conditions, and the distance, time, and commuting conditions result in expense, inconvenience, or hardship significantly greater than that encountered in metropolitan area commuting. A determination may only be made on an individual location basis.

(b) Except when the criteria in paragraph (a)(2) or (3) of this section are met, the criteria in paragraph (a)(1) of this section are not met:

(1) When the duty post is within the boundary of a metropolitan area, a developed urban area, or community of sufficient size to provide adequate consumer facilities; and

(2) When the duty post is within 50 miles of the center of, or other appropriate point for large cities or areas, a metropolitan area, a developed urban area, or community of sufficient size to provide adequate consumer facilities. (This generally excludes a post of duty within 50 miles of any city of 5,000 or more population.)

(c) A determination of remoteness for a duty post outside the 50 United States will be made on an individual location basis, taking into consideration the distance, time, and commuting conditions, and the extent to which these factors result in significant expense, inconvenience, or hardship.

§ 591.305 Allowance rates.

(a) *General.* An allowance rate may not exceed $10 a day. An allowance rate shall be established for each post of duty determined to be remote under § 591.304, and shall be terminated or adjusted as warranted. In determining the amount of the allowance rate, the following shall be considered:

(1) Transportation expenses incurred in commuting to the remote post of duty as compared to transportation expenses (including cost of public transportation service) representative of those incurred in metropolitan areas within the United States or overseas as appropriate as periodically determined by the Office of Personnel Management.

(2) Expenses incurred for lodging, meals, other services, and miscellaneous expenses when it is not feasible for an employee to commute daily as at duty posts determined under § 591.304(a)(2).

(3) Inconvenience or hardship associated with commuting to the remote duty post taking into account such factors as travel time, road conditions and terrain, type and quality of vehicle, and climate conditions, and conditions that exist at those duty posts determined by the Office of Personnel Management to meet the criteria in § 591.304(a)(2).

(4) Operational or workload demands, weather conditions, or other situations which require an employee to report to or remain at this post of duty substantially beyond his or her normal arrival or departure time with

respect to those duty posts meeting the criteria in § 591.304(a)(2).

(b) *Authorized allowance rates.* Each authorized allowance rate for each duty post may consist of up to three parts, separately stated as appropriate, and the authorized allowance rate shall be paid as provided in § 591.306, but no employee may be paid more than $10 a day. The parts which make up the authorized allowance rate are:

(1) *Transportation allowance*—(i) *Commuting by private motor vehicle.* A transportation allowance schedule showing the daily transportation expense rate to be paid under the distances and conditions described, when commuting by private motor vehicle is set out as Appendix A to this subpart and is incorporated in and made part of this section.

(ii) *Travel by commercial or Government-provided transportation.* The transportation allowance shall be limited to the cost of the service less normal cost for public transportation service in metropolitan areas.

(2) *Inconvenience or hardship allowance.* An allowance rate to compensate for hardship or inconvenience may not be considered unless the travel time normally exceeds one hour one way between the closest established community or suitable place or residence and the remote duty post. An allowance schedule covering land travel by motor vehicle, showing the daily rates to be paid under the time factors and conditions described, for inconvenience or hardship combined, is set out as Appendix B to this subpart and is incorporated in and made part of this section.

(3) *Other commuting situations.* Notwithstanding paragraphs (b)(1) and (b)(2) of this section, when commuting is by boat, aircraft or an unusual conveyance, or under extraordinary conditions by motor vehicle, or involving factors or conditions unique to the duty post, the Office of Personnel Management shall establish the allowance based on the facts and circumstances of that individual remote duty post.

(4) *Miscellaneous.* When daily commuting is impractical as determined under § 591.304(a)(2):

(i) The Office of Personnel Management may authorize a miscellaneous allowance, the amount to depend on such factors as miscellaneous expenses, living conditions that exist at the duty post, or inconvenience or hardship that may be associated with this type of employment environment. When employees are required to pay a fee for lodging, meals, or other services at the remote duty post, the miscellaneous allowance shall at least equal the amount charged for the use of facilities and services.

(ii) On those days when operational or workload demands, weather conditions, or other situations result in employees reporting to or remaining at the remote duty post substantially beyond normal arrival or departure time, the maximum daily allowance rate of $10 shall be paid.

§ 591.306 Employee eligibility for an allowance.

(a) An authorized allowance rate shall be paid to each employee with a permanent duty station at or within a remote post of duty approved under § 591.304, regardless of type of appointment or work schedule, only (1) when the employee travels the prescribed minimum distance and time, or is subject to prescribed minimum inconvenience or hardship factors, while commuting from the nearest established community or suitable place of residence and the remote duty post, or (2) the employee remains at the worksite at the direction of management because daily commuting is impractical.

(b) An employee shall be paid an authorized allowance rate for those days on which he or she incurs unusual expense in commuting to a remote post of duty or for those days on which he or she is subject to extraordinary inconvenience or hardship during the commuting.

(c) An employee who resides permanently, or temporarily for his or her own convenience at a remote duty post is not eligible for an authorized allowance rate during his or her period of residence.

§ 591.307 Payment of allowance rate.

(a) An authorized allowance rate is earned on a daily basis; however, where appropriate for administrative convenience, the rate may be averaged taking into consideration the number of noncommuting days over a period of time, and paid for each workday, excluding days in a nonpay status and period of extended absence.

(b) The transportation allowance is paid only when expense is incurred and at the lowest rate consistent with available transportation.

(c) The inconvenience or hardship allowance is paid regardless of eligibility for the transportation expense part of the allowance rate when the employee is otherwise eligible.

(d) Except as provided under § 591.305(b)(4)(ii), when the necessity for remaining at the post of duty for the workweek is the basis for the allowance under § 591.304(a)(2), the allowance rate is paid for each full day, or prorated for each part of a day, that the employee remains at the duty post.

(e) The transportation allowance prescribed by paragraph (b)(1)(i) of § 591.305, or other allowance as may be prescribed for commuting by private motor vehicle, may not be paid unless the officially approved work schedule of the employee precludes use of the transportation services that may be available at lower cost.

(f) An employee, who normally commutes on a daily basis, will not be disqualified from receiving an authorized allowance when he or she is officially required to remain overnight at the remote duty post, for one or more days on a temporary basis, because of the schedule of operations or the nature of assigned work.

(g) When a remote duty post is determined by the Office of Personnel Management under paragraph (a)(3) or (c) of § 591.304 as being basically eligible for an allowance, the Office of Personnel Management will determine the basis for payment of the allowance rate taking into consideration the facts and circumstances associated with commuting to the remote duty post.

§ 591.308 Relationship to additional pay payable under other statutes.

An allowance authorized under this subpart is in addition to any additional pay or allowances payable under other statutes. It shall not be considered part of the employee's rate of basic pay in computing additional pay or allowances payable under other statutes.

§ 591.309 Effective date for payment of allowances.

When an allowance is authorized for a remote duty post, the authorization shall specify the effective date that an agency shall begin paying the allowance to its employees, except that a date earlier than January 8, 1971, may not be specified.

§ 591.310 Effect of regulations in this subpart on allowances established under previous statutes.

Regulations in this subpart do not require a reduction in the allowance rates authorized under previous statutes unless an adjustment is determined to be warranted on the basis of a change in facts and circumstances on which that previous allowance was established.

APPENDIX A OF SUBPART C—DAILY TRANSPORTATION ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY PRIVATE MOTOR VEHICLE TO REMOTE DUTY POSTS

SCHEDULE I—EFFECTIVE JANUARY 8, 1971, THROUGH JULY 12, 1975

Round trip distance in excess of 50 miles	Degree A commuting conditions	Degree B commuting conditions	Degree C commuting conditions
up to 9 miles	$0.20	$0.22	$0.24
10 to 19	.70	.77	.84
20 to 29	1.20	1.32	1.44
30 to 39	1.70	1.87	2.04
40 to 49	2.20	2.42	2.64
50 to 59	2.70	2.97	3.24
60 to 69	3.20	3.52	3.84
70 to 79	3.70	4.07	4.44
80 to 89	4.20	4.62	5.04
90 to 99	4.70	5.17	5.64
100 to 109	5.20	5.72	6.24
110 to 119	5.70	6.27	6.84
120 to 129	6.20	6.82	7.44
130 to 139	6.70	7.37	8.04
140 to 149	7.20	7.92	8.64
150 to 159	7.70	8.47	9.24

SCHEDULE I—EFFECTIVE JANUARY 8, 1971, THROUGH JULY 12, 1975—Continued

Round trip distance in excess of 50 miles	Degree A commuting conditions	Degree B commuting conditions	Degree C commuting conditions
160 to 169	8.20	9.02	9.84
170 and over	8.70	9.57	[1] 10.00

[1] See footnote at end of Schedule II.

SCHEDULE II—EFFECTIVE ON OR AFTER JULY 13, 1975

Round trip distance in excess of 50 miles	Degree A commuting conditions	Degree B commuting conditions	Degree C commuting conditions
up to 9 miles	$0.30	$0.32	$0.34
10 to 19	1.05	1.12	1.19
20 to 29	1.80	1.92	2.04
30 to 39	2.55	2.72	2.89
40 to 49	3.30	3.52	3.74
50 to 59	4.13	4.32	4.59
60 to 69	4.80	5.12	5.44
70 to 79	5.55	5.92	6.29
80 to 89	6.30	6.72	7.14
90 to 99	7.05	7.52	7.99
100 to 109	7.80	8.32	8.84
110 to 119	8.55	9.12	9.69
120 to 129	9.30	9.92	[1] 10.00
130 to 139	[1] 10.00	[1] 10.00	[1] 10.00
140 to 149	[1] 10.00	[1] 10.00	[1] 10.00
150 to 159	[1] 10.00	[1] 10.00	[1] 10.00
160 to 169	[1] 10.00	[1] 10.00	[1] 10.00
170 and over	[1] 10.00	[1] 10.00	[1] 10.00

[1] Under the statute, $10 a day is the maximum allowance.

SCHEDULE III—EFFECTIVE ON OR AFTER DECEMBER 28, 1980

Round trip distance in excess of 50 miles:	Degree A	Degree B	Degree C
Up to 9 miles	$0.40	$0.42	$0.44
10 to 19	1.40	1.47	1.54
20 to 29	2.40	2.52	2.64
30 to 39	3.40	3.57	3.74
40 to 49	4.40	4.62	4.84
50 to 59	5.40	5.67	5.94
60 to 69	6.40	6.72	7.04
70 to 79	7.40	7.77	8.14
80 to 89	8.40	8.82	9.24
90 to 99	9.40	9.87	10.00
100 to 109	[1] 10.00	[1] 10.00	[1] 10.00
110 to 119	10.00	10.00	10.00
120 to 129	10.00	10.00	10.00
130 to 139	10.00	10.00	10.00
140 to 149	10.00	10.00	10.00
150 to 159	10.00	10.00	10.00
160 to 169	10.00	10.00	10.00
170 and over	10.00	10.00	10.00

[1] Under the statute, $10 a day is the maximum allowance.

Degree A Commuting Conditions

Good paved roads; climatic conditions cause intermittent driving difficulty.

Degree B Commuting Conditions

Roads typically fair but may be good for part of distance or may be unpaved for short distances; climatic conditions during part of a season, in relation to terrain, contribute to additional cost.

Degree C Commuting Conditions

Fair to poor roads; unpaved for part of distance, or travel over range; hilly or mountainous terrain; climatic conditions during most of a season contribute to additional cost.

[44 FR 55134, Sept. 25, 1979, as amended at 45 FR 76087, Nov. 18, 1980]

APPENDIX B OF SUBPART C—DAILY INCONVENIENCE OR HARDSHIP ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY MOTOR VEHICLE TO REMOTE DUTY POSTS

Round trip distance in excess of 2 hours	Degree A commuting conditions	Degree B commuting conditions	Degree C commuting conditions
up to 15 minutes	$0.50	$0.63	$0.75
16 to 30	1.00	1.25	1.50
31 to 45	1.50	1.88	2.25
46 to 60	2.00	2.50	3.00
61 to 75	2.50	3.13	3.75
76 to 90	3.00	3.75	4.50
91 to 105	3.50	4.38	5.25
106 to 120	4.00	5.00	6.00
121 to 135	4.50	5.63	6.75
136 to 150	5.00	6.25	7.50
151 to 165	5.50	6.88	8.25
166 to 180	6.00	8.13	9.00

Degree A Commuting Conditions

Good paved roads; climatic conditions, in relation to type and quality of vehicle, cause minimal discomfort during trip.

Degree B Commuting Conditions

Roads typically fair, but may be good for part of distance and possibly unpaved for short distances; climatic conditions during part of a season, in relation to type and quality of vehicle, result in moderate discomfort during trip.

Degree C Commuting Conditions

Fair to poor roads, unpaved for part of distance, climatic conditions during most of a season, in combination with such factors as type and quality of vehicle and terrain, result in unsual discomfort during trip.

PART 595—PHYSICIANS' COMPARABILITY ALLOWANCES

Sec.
595.101 General.
595.102 Coverage and exclusions.
595.103 Establishment of categories of physicians.
595.104 Determination of recruitment and retention problem.
595.105 Determination of amount of comparability allowance.
595.106 Termination of service agreement.
595.107 Approval of agency plans.
595.108 Reports.

AUTHORITY: 5 U.S.C. 5948; E.O. 12109, 44 FR 1067, Jan. 3, 1979.

SOURCE: 44 FR 40876, July 13, 1979, unless otherwise noted.

§ 595.101 General.

Section 5948 of title 5, United States Code, authorizes the payment of allowances to certain eligible Federal physicians who enter into service agreements with their agencies. These allowances are paid only in the case of categories of physicians for which the agency is experiencing recruitment and retention problems, and are fixed at the minimum amounts necessary to deal with such problems. The President has delegated regulatory responsibility for this program to the Director of the Office of Personnel Management, acting in consultation with the Director of the Office of Management and Budget. This part contains the regulations, criteria, and conditions which the Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, has prescribed for the administration of the physicians' comparability allowance program. This part supplements and implements the provisions of 5 U.S.C. 5948, and must be read together with that section of law.

§ 595.102 Coverage and exclusions.

(a) Subsection (g)(1) of 5 U.S.C. 5948 defines those covered by the physicians' comparability allowance program as individuals employed as physicians under certain Federal pay systems listed in that subsection. For the purposes of this part, an individual is "employed as a physician" only if he or she is serving in a position the duties and responsibilities of which could not be satisfactorily performed by an incumbent who is not a physician.

(b) In addition to individuals covered by the pay systems listed in subsection (g)(1) of 5 U.S.C. 5948, the physicians' comparability allowance program covers individuals employed as physicians and paid under subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service, or Chapter 54 of that title, relating to the Performance Management and Recognition System.

(c) Subsection (b) of 5 U.S.C. 5948 prohibits the payment of physicians' comparability allowances to certain physicians, including physicians who are reemployed annuitants. For the purpose of that subsection, a "reemployed annuitant" means an individual who is receiving or has title to and has applied for an annuity under any retirement program of the Government of the United States, or the government of the District of Columbia, on the basis of service as a civilian employee in the civil service.

[44 FR 40876, July 13, 1979, as amended at 50 FR 11799, Mar. 25, 1985; 50 FR 35494, Aug. 30, 1985]

§ 595.103 Establishment of categories of physicians.

(a) Under subsection (c) of 5 U.S.C. 5948, the head of each agency employing physicians is required to determine categories of physician positions for which there is a significant recruitment and retention problem, and physicians' comparability allowances may be paid only to physicians serving in positions in such categories.

(b) In determining categories of physician positions, the head of each agency must, as a minimum, establish as separate categories the following types of positions:

(1) Positions primarily involving the practice of medicine or direct service to patients, involving the performance of diagnostic, preventive, or therapeutic services to patients in hospitals, clinics, public health programs, diagnostic centers, and similar settings, but not including positions described in paragraph (b)(3) of this section;

(2) Positions primarily involving the conduct of medical research and experimental work, including the conduct of medical work pertaining to food, drugs, cosmetics, and devices (or the review or evaluation of such medical research and experimental work), or the identification of causes or sources of disease or disease outbreaks;

(3) Positions primarily involving the evaluation of physical fitness, or the provision of initial treatment of on-the-job illness or injury, or the performance of preemployment examinations, preventive health screenings, or fitness-for-duty examinations; and

(4) Positions not described by paragraph (b) (1), (2), or (3) of this section, including positions involving disability evaluation and rating, the performance of medicolegal autopsies, training activities, or the administration of medical and health programs, including the administration of patient care or medical research and experimental programs.

(c) The agency head may establish as separate categories any additional subdivisions of these four categories of positions, based on any factors the agency head determines relevant. These may include such factors as the location, grade or level, and medical specialization of the positions, and the level of qualifications sought by the agency for physicians in the category.

§ 595.104 Determination of recruitment and retention problem.

A significant recruitment and retention problem shall be considered to exist for each category of physician position established under § 595.103 of this part only if the four following conditions are met with respect to the category:

(a) Such evidence as vacant positions, an unacceptably high turnover rate, or other positive evidence indicates that the agency is unable to recruit and retain physicians for the category;

(b) The qualification requirements being used as a basis for considering candidates for the vacant positions in the category do not exceed the qualifications that are actually necessary for successful performance of the work of the positions in the category;

(c) The agency has made efforts to recruit qualified candidates for any vacant positions in the category and to retain physicians presently employed in positions in the category; and

(d) A sufficient number of qualified candidates is not available to fill the existing vacancies in the category at the rate of pay the agency may offer if no comparability allowance is paid.

§ 595.105 Determination of amount of comparability allowance.

(a) The amount of the comparability allowance payable for each category of physician position established under § 595.103 of this part must be the minimum amount necessary to deal with the recruitment and retention problem identified under § 595.104 of this part for that category of position. In determining this amount, the agency head shall consider the relative earnings, responsibilities, expenses, workload, working conditions, conditions of employment, and personnel benefits for physicians in each category and for comparable physicians inside and outside the Federal Government.

(b) Under subsection (a) of 5 U.S.C. 5948, the comparability allowance payable to any Government physician may not exceed $7,000 per annum for a physician who has served as a Government physician for 24 months or less, or $10,000 per annum for a physician who has served as a Government physician for more than 24 months. For the purpose of determining a physician's length of service for this requirement, prior service as a Government physician need not have been continuous, but any periods of leave without pay may not be counted as service.

(c) Under subsection (b)(1) of 5 U.S.C. 5948, a physician who is employed on less than a half-time or intermittent basis is excluded from the physicians' comparability allowance program altogether. a physician who is employed on a regularly scheduled part-time basis of half-time or more is eligible to receive an allowance in accordance with this part, but any such allowance shall be prorated according to the proportion of the physicians' work schedule to full-time employment.

(d) A physician who is serving with the Government under a loan repayment program shall have the amount of loan being repaid deducted from any allowance for which he or she is eligible in accordance with this part, and may receive only that portion of such allowance which exceeds the amount of loan being repaid by service during the period in question.

§ 595.106 Termination of service agreement.

(a) Under subsection (f) of 5 U.S.C. 5948, each service agreement entered into by an agency and a physician under the comparability allowance program may prescribe the terms under which the agreement may be terminated and the amount of allowance, if any, required to be refunded by the physician for each reason for termination. In the case of each service agreement covering a period of service of more than one year, the service agreement must include a provision that, if the physician completes more than one year of service pursuant to the agreement, but fails to complete the full period of service specified in the agreement either voluntarily or because of misconduct by the physician, the physician shall be required to refund the amount of allowance he or she has received under the agreement for the 26 weeks of service immediately preceding the termination (or for a longer period, if specified in the agreement).

§ 595.107 Approval of agency plans.

(a) An agency may not enter into any service agreement under 5 U.S.C. 5948 until the agency's plan for implementing the physicians' comparability allowance program has been submitted to and approved by the Office of Management and Budget in accordance with this section and such instructions as the Office of Management and Budget may prescribe.

(b) The agency shall submit to the Office of Management and Budget a complete description of its plan for implementing the physicians' comparability allowance program, including the following:

(1) An identification of the categories of physician positions that the agency has established under § 595.103 of this part, and of the basis for such categories;

(2) An explanation of the determination that a recruitment and retention problem exists for each such category, in accordance with the criteria in § 595.104 of this part; and

(3) An explanation of the basis for the amount of comparability allowance determined necessary for each category of physician position under § 595.105 of this part.

(c) The Office of Management and Budget shall review each agency's description of its plan for implementing the physicians' comparability allowance program and determine if the plan is consistent with the provisions of 5 U.S.C. 5948 and the requirements of this part, and shall advise the agency within 15 calendar days of receipt of the agency's plan by the Office of Management and Budget whether the plan is so consistent or what changes need to be made in the agency's plan to make it so consistent.

§ 595.108 Reports.

(a) Because of the experimental and temporary nature of the physicians' comparability allowance program, it will be necessary for the Office of Personnel Management to collect information on the administration of the program by the agencies, and on the effects the program has on the recruitment and retention of Government physicians. The Office of Personnel Management will prescribe the number, contents, timing, and format of the reports necessary to collect this information, and every agency using the physicians' comparability allowance program is required to submit such reports as the Office may prescribe. These reports must include, among other things, the following:

(1) A listing of the amount of allowance actually paid to the agency's physicians; and

(2) An assessment of the effect of the physicians' comparability allow-

ance program on the agency's recruitment and retention of physicians.

(b) The Central Intelligence Agency and the National Security Agency are not subject to the requirements of this section.

PART 610—HOURS OF DUTY

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SOURCE: 33 FR 12474, Sept. 4, 1968, unless otherwise noted.

Subpart A—Weekly and Daily Scheduling of Work

AUTHORITY: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964-1965 Comp., p. 317, unless otherwise noted.

§ 610.101 Coverage.

This subpart applies to each employee to whom Subpart A of Part 550 applies and to each employee whose pay is fixed and adjusted from time to time under section 5343 or 5349 of title 5, United States Code, or by a wage board or similar administrative authority serving the same purpose.

[42 FR 3297, Jan. 18, 1977]

§ 610.102 Definitions.

In this subpart:

(a) "Administrative workweek" means a period of 7 consecutive calendar days designated in advance by the head of an agency under section 6101 of title 5, United States Code.

(b) "Regularly scheduled administrative workweek," for a full-time employee, means the period within an administrative workweek, established in accordance with § 610.111, within which the employee is regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

(c) "Basic workweek," for full-time employees, means the 40-hour workweek established in accordance with § 610.111.

(d) "Agency" means an Executive agency and a military department as defined by sections 105 and 102 of title 5, United States Code.

(e) "Head of agency" means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

(f) "Employee" means an employee of an agency to whom this subpart applies.

(g) "Regularly scheduled" work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111.

(h) "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

(5 U.S.C. 5548 and 6101(c))

[33 FR 12474, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983]

WORKWEEK

§ 610.111 Establishment of workweeks.

(a) The head of each agency, with respect to each full-time employee to whom this subpart applies, shall establish by regulation:

(1) A basic workweek of 40 hours which does not extend over more than 6 of any 7 consecutive days. Except as provided in paragraphs (b), (c), and (d) of this section, the regulation shall specify the days and hours within the administrative workweek that constitute the basic workweek.

(2) A regularly scheduled administrative workweek that consists of the 40-hour basic workweek established in accordance with paragraph (a)(1) of this section, plus the period of regular overtime work, if any, required of each employee. Except as provided in paragraphs (b), (c), and (d) of this section, the regulation, for purposes of leave and overtime pay administration, shall specify by days and hours of each day the periods included in the regularly scheduled administrative workweek that do not constitute a part of the basic workweek.

(b) When it is impracticable to prescribe a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek, the head of an agency may establish the first 40 hours of duty performed within a period of not more than 6 days of the administrative workweek as the basic workweek. A first 40-hour tour of duty is the basic workweek without the requirement for specific days and hours within the administrative workweek. All work performed by an employee within the first 40 hours is considered regularly scheduled work for premium pay and hours of duty purposes. Any additional hours of officially ordered or approved work within the administrative workweek are overtime work.

(c) (1) When an employee is paid additional pay under section 5545(c)(1) of title 5, United States Code, his regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty a week.

(2) When an employee has a tour of duty which includes a period during which he remains at or within the confines of his station in a standby status rather than performing actual work his regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty a week, including time in a standby status except that allowed for sleep and meals by regulation of the agency.

(d) When the head of an agency establishes a flexible or compressed work schedule under section 6122 or section 6127 of title 5, United States Code, he or she shall establish a basic work requirement for each employee as defined in section 6121 of title 5, United States Code. A flexible or compressed work schedule is a scheduled tour of duty and all work performed by an employee within the basic work requirement is considered regularly scheduled work for premium pay and hours of duty purposes.

(5 U.S.C. 5548 and 6101(c))

[33 FR 12474, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983; 48 FR 44060, Sept. 27, 1983]

WORK SCHEDULES

§ 610.121 Establishment of work schedules.

(a) Except when the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he or she shall provide that—

(1) Assignments to tours of duty are scheduled in advance of the administrative workweek over periods of not less than 1 week;

(2) The basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(3) The working hours in each day in the basic workweek are the same;

(4) The basic nonovertime workday may not exceed 8 hours;

(5) The occurrence of holidays may not affect the designation of the basic workweek; and

(6) Breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

(b)(1) The head of an agency shall schedule the work of his or her employees to accomplish the mission of the agency. The head of an agency shall schedule an employee's regularly scheduled administrative workweek so that it corresponds with the employee's actual work requirements.

(2) When the head of an agency knows in advance of an administrative workweek that the specific days and/or hours of a day actually required of an employee in that administrative workweek will differ from those required in the current administrative workweek, he or she shall reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. The head of the agency shall inform the employee of the change, and he or she shall record the change on the employee's time card or other agency document for recording work.

(3) If it is determined that the head of an agency should have scheduled a period of work as part of the employee's regularly scheduled administrative workweek and failed to do so in accordance with paragraphs (b) (1) and (2) of this section, the employee shall be entitled to the payment of premium pay for that period of work as regularly scheduled work under Subpart A of Part 550 of this chapter. In this regard, it must be determined that the head of the agency: (i) Had knowledge of the specific days and hours of the work requirement in advance of the administrative workweek, and (ii) had the opportunity to determine which employee had to be scheduled, or rescheduled, to meet the specific days and hours of that work requirement.

(5 U.S.C. 5548 and 6101(c))

[48 FR 3935, Jan. 28, 1983]

§ 610.122 Variations in work schedules for educational purposes.

(a) Notwithstanding § 610.121, the head of an agency may authorize a special tour of duty of not less than 40 hours to permit an employee to take one or more courses in a college, university, or other educational institution when it is determined that:

(1) The courses being taken are not training under chapter 41 of title 5, United States Code;

(2) The rearrangement of the employee's tour of duty will not appreciably interfere with the accomplishment of the work required to be performed;

(3) Additional costs for personal services will not be incurred; and

(4) Completion of the courses will equip the employee for more effective work in the agency.

(b) The agency may not pay to the employee any premium pay solely because the special tour of duty authorized under this section causes the employee to work on a day, or at a time during the day, for which premium pay would otherwise be payable.

(c) OPM may from time to time request an agency to report on the use of this authority.

§ 610.123 Travel on official time.

Insofar as practicable travel during nonduty hours shall not be required of an employee. When it is essential that this be required and the employee may not be paid overtime under § 550.112(e) of this chapter the official concerned shall record his reasons for ordering travel at those hours and shall, upon request, furnish a copy of his statement to the employee concerned.

Subpart B—Holidays

Authority: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964–1965 Comp., p. 317.

§ 610.201 Identification of holidays.

In this subpart, "holiday" has the same meaning given that word in section 2(a) of Executive Order 11582.

[42 FR 3297, Jan. 18, 1977]

§ 610.202 Determining the holiday.

For purposes of pay and leave, the day to be treated as a holiday is determined as follows:

(a) When a holiday falls on a workday in an employee's basic workweek (as defined in § 610.102(c)), that workday is his or her holiday.

(b) When a holiday falls on a nonworkday outside an employee's basic workweek, the day to be treated as his or her holiday is determined in accordance with section 6103(b) of title 5, United States Code, and Executive Orders 11582.

[42 FR 3297, Jan. 18, 1977]

Subpart C—Administrative Dismissals of Daily, Hourly, and Piecework Employees

AUTHORITY: 5 U.S.C. 6104; E.O. 10552, 3 CFR, 1954-1958 Comp., p. 201.

§ 610.301 Purpose.

The purpose of this subpart is to provide uniform and equitable standards under which regular employees paid at daily, hourly, or piecework rates may be relieved from duty with pay by administrative order.

§ 610.302 Policy statement.

The authority in this subpart may be used only to the extent warranted by good administration for short periods of time not generally exceeding 3 consecutive work days in a single period of excused absence. This authority may not be used in situations of extensive duration or for periods of interrupted or suspended operations such as ordinarily would be covered by the scheduling of leave, furlough, or the assignment of other work. Insofar as practicable, each administrative order issued under this subpart shall provide benefits for regular employees paid at daily, hourly, or piecework rates similar to those provided for employees paid at annual rates.

§ 610.303 Definitions.

In this subpart:

(a) "Administrative order" means an order issued by an authorized official of an agency relieving regular employees from active duty without charge to leave or loss of pay.

(b) "Regular employees" means employees paid at daily, hourly, or piecework rates who have a regular tour of duty, and whose appointments are not limited to 90 days or less or who have been currently employed for a continuous period of 90 days under one or more appointments without a break in service.

[33 FR 12474, Sept. 4, 1968, as amended at 34 FR 2479, Feb. 21, 1969]

§ 610.304 Coverage.

This subpart applies to regular employees of the Federal Government paid at daily, hourly, or piecework rates. This subpart does not apply to experts and consultants.

§ 610.305 Standards.

An administrative order may be issued under this subpart when:

(a) Normal operations of an establishment are interrupted by events beyond the control of management or employees;

(b) For managerial reasons, the closing of an establishment or portions thereof is required for short periods; or

(c) It is in the public interest to relieve employees from work to participate in civil activities which the Government is interested in encouraging.

(d) The circumstances are such that an administrative order under paragraph (a), (b), or (c) of this section is not appropriate and the agency under its regulations excuses, or is authorized to excuse, without charge to leave or loss of pay, employees paid on an annual basis.

[33 FR 12474, Sept. 4, 1968, as amended at 34 FR 2479, Feb. 21, 1969]

§ 610.306 Supplemental regulations.

Each agency is authorized to issue supplemental regulations not inconsistent with this subpart.

[33 FR 12474, Sept. 4, 1968, as amended at 34 FR 2479, Feb. 21, 1969]

Subpart D—Flexible and Compressed Work Schedules

AUTHORITY: 5 U.S.C. 6133(a).

SOURCE: 48 FR 44060, Sept. 27, 1983, unless otherwise noted.

§ 610.401 General.

This subpart contains regulatory requirements prescribed by the Office of Personnel Management to implement certain provisions of subchapter 11 of chapter 61 of title 5, United States Code. These regulations supplement that subchapter and must be read together with it.

§ 610.402 Coverage.

The regulations contained in this subpart apply only to flexible work schedules and compressed work schedules established under subchapter 11 of chapter 61 of title 5, United States Code.

§ 610.403 Definitions.

In this subpart "Agency" and "Employee" have the meaning given these terms in section 6121 of title 5, United States Code.

§ 610.404 Requirement for time-accounting method.

An agency that authorizes a flexible work schedule or a compressed work schedule under this subpart shall establish a time-accounting method that will provide affirmative evidence that each employee subject to the schedule has worked the proper number of hours in a biweekly pay period.

§ 610.405 Holiday for part-time employees on flexible work schedules.

If a part-time employee is relieved or prevented from working on a day within the employee's scheduled tour of duty that is designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay with respect to the holiday for the number of hours the employee is scheduled to work on that day, not to exceed 8 hours. When a holiday falls on a nonworkday of a part-time employee, he or she is not entitled to an in-lieu-of day for that holiday.

§ 610.406 Holiday for employees on compressed work schedules.

(a) If a full-time employee is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay for the number of hours of the compressed work schedule on that day.

(b) If a part-time employee is relieved or prevented from working on a day within the employee's scheduled tour of duty that is designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay for the number of hours of the compressed work schedule on that day. When a holiday falls on a nonworkday of a part-time employee, he or she is not entitled to an in-lieu-of day for that holiday.

§ 610.407 Premium pay for holiday work for employees on compressed work schedules.

An employee on a compressed schedule who performs work on a holiday is entitled to basic pay, plus premium pay at a rate equal to basic pay, for the work that is not in excess of the employee's compressed work schedule for that day. For hours worked on a holiday in excess of the compressed work schedule, a full-time employee is entitled to overtime pay under applicable provisions of law and a part-time employee is entitled to straight time pay or overtime pay, depending on whether the excess hours are nonovertime hours or overtime hours.

PART 630—ABSENCE AND LEAVE

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AUTHORITY: 5 U.S.C. 6311, unless otherwise noted.

SOURCE: 33 FR 12475, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 630.101 Responsibility for administration.

The head of an agency having employees subject to this part is responsible for the proper administration of this part so far as it pertains to employees under his jurisdiction, and for maintaining an account of leave for each employee in accordance with methods prescribed by the General Accounting Office.

[34 FR 13655, Aug. 26, 1969]

Subpart B—Definitions and General Provisions for Annual and Sick Leave

§ 630.201 Definitions.

(a) In section 6301(2)(iii) of title 5, United States Code, the term "temporary employee engaged in construction work at an hourly rate" means an employee hired on a temporary basis solely for the purpose of work on a specific construction project and paid at an hourly rate.

(b) In Subparts B through G of this part:

(1) "Accrued leave" means the leave earned by an employee during the current leave year that is unused at any given time in that leave year.

(2) "Accumulated leave" means the unused leave remaining to the credit of an employee at the beginning of a leave year.

(3) "Contagious disease" means a disease which is ruled as subject to quarantine, requires isolation of the patient, or requires restriction of movement by the patient for a specified period as prescribed by the health authorities having jurisdiction.

(4) "Employee" means an employee to whom subchapter I of chapter 63 of title 5, United States Code, applies.

(5) "Leave year" means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

(6) "Medical certificate" means a written statement signed by a regis-

tered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

(7) "United States" means the several States and the District of Columbia.

[33 FR 12475, Sept. 4, 1968, as amended at 34 FR 13655, Aug. 26, 1969]

§ 630.202 Full biweekly pay period; leave earnings.

(a) *Full-time employees.* A full-time employee earns leave during each full biweekly pay period while in a pay status or in a combination of a pay status and a nonpay status.

(b) *Part-time employees; hourly postal field service employees.* Hours in a pay status in excess of an agency's basic working hours in a pay period are disregarded in computing the leave earnings of a part-time employee, except that an hourly employee in the field service of the U.S. Postal Service earns leave to the annual maximum in accordance with his actual number of hours in a pay status.

§ 630.203 Pay periods other than biweekly.

An employee paid on other than a biweekly pay period basis earns leave on a pro rata basis for a full pay period.

§ 630.204 Fractional pay periods.

When an employee's service is interrupted by a non-leave-earning period, he earns leave on a pro rata basis for each fractional pay period that occurs within the continuity of his employment.

§ 630.205 Change in length of day.

When the number of hours of duty in a full-time employee's workday is permanently changed, the leave to his credit is converted to the proper number of hours based upon the new workday.

§ 630.206 Minimum charge.

(a) Unless an agency establishes a minimum charge of less than one hour, or establishes a different minimum charge through negotiations, the minimum charge for leave is one hour, and additional charges are in multiples thereof. If an employee is unavoidably or necessarily absent for less than one hour, or tardy, the agency, for adequate reason, may excuse him without charge to leave.

(b) When an employee is charged with leave for an unauthorized absence or tardiness, the agency may not require him to perform work for any part of the leave period charged against his account.

[33 FR 12475, Sept. 4, 1968, as amended at 38 FR 18446, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

§ 630.207 Travel time.

The travel time granted an employee under section 6303(d) of title 5, United States Code, is inclusive of the time necessarily occupied in traveling to and from his post of duty and (a) the United States, or (b) his place of residence, which is outside the area of employment, in the Commonwealth of Puerto Rico or the territories or possessions of the United States. The employee shall designate his place of residence in his request for leave under section 6303(d) of title 5, United States Code.

§ 630.208 Reduction in leave credits.

(a) When the number of hours in a nonpay status in a full-time employee's leave year equals the number of basepay hours in a pay period, the agency shall reduce his credits for leave by an amount equal to the amount of leave the employee earns during the pay period. When the employee's number of hours of nonpay status does not require a reduction of leave credits, the agency shall drop those hours at the end of the employee's leave year. For the purpose of determining the reduction of leave credits under this paragraph when an employee has one or more breaks in service during a leave year, the agency shall include all hours in a nonpay status (other than nonpay status during a fractional pay period when no leave accures) for each period of service during the leave year in which annual leave accrued.

(b) An employee who is in a nonpay status for his entire leave year does not earn leave.

(c) When a reduction in leave credits results in a debit to an employee's annual leave account at the end of a leave year, the agency shall:

(1) Carry the debit forward as a charge against the annual leave to be earned by the employee in the next leave year; or

(2) Require the employee to refund the amount paid him for the period covering the excess leave that resulted in the debit.

(d) A period covered by an employee's refund for unearned advanced leave is deemed not a nonpay status under this section.

§ 630.209 Refund for unearned leave.

(a) When an employee who is indebted for unearned leave is separated, the agency shall:

(1) Require him to refund the amount paid him for the period covering the leave for which he is indebted; or

(2) Deduct that amount from any pay due him.

An employee who enters active military service with a right of restoration is deemed not separated for the purpose of this paragraph.

(b) This section does not apply when an employee:

(1) Dies;

(2) Retires for disability; or

(3) Resigns or is separated because of disability which prevents him from returning to duty or continuing in the service, and which is the basis of the separation as determined by his agency on medical evidence acceptable to it.

§ 630.210 Uncommon tours of duty.

An agency having employees who work 24-hour shifts or other uncommon tours of duty may prescribe supplemental regulations consistent with subchapter I of chapter 63 of title 5, United States Code, and this part for administering leave for these employees.

§ 630.211 Exclusion of Presidential appointees.

(a) *Authority.* Section 6301(2)(xi) of title 5, United States Code, authorizes the exclusion of certain Presidential appointees in the executive branch or the government of the District of Columbia from the annual and sick leave provisions of subchapter I of chapter 63 of title 5, United States Code, and from the related provisions of this part. This authority does not apply to Presidential appointees paid more than the rate for GS-18, who are excluded from the leave provisions by 5 U.S.C. 6301(2)(x), nor does it apply to United States Attorneys or United States Marshals, who may not be excluded from the leave provisions. The President, by Executive Order 10540, as amended, has delegated to the Office of Personnel Management the responsibility for making exclusions under section 6301(2)(xi), and the Office of Personnel Management delegated responsibility to the heads of agencies in accordance with the provisions of this section.

(b) *Criteria for exclusions.* The head of an agency may exclude an officer in the agency from the annual and sick leave provisions only if the officer meets all of the following criteria:

(1) The officer is a Presidential appointee;

(2) The rate of pay for the officer's position does not exceed the rate for GS-18 (Presidential appointees paid more than the rate for GS-18 being automatically excluded from annual and sick leave); and

(3) The officer's responsibilities for carrying out the duties of the position continue outside normal duty hours and while away from the normal duty post.

(c) *Revocation of exclusion.* The head of an agency may revoke an exclusion from the annual and sick leave provisions which was made under this section.

(d) *Reports.* The head of an agency must report any exclusion, or revocation of an exclusion, authorized under this section to the Office of Personnel Management.

(e) *Continuation of previous authorizations.* Any officer in an agency who was excluded by action of the President or the Civil Service Commission prior to February 15, 1979, from the annual and sick leave provisions under the authority of 5 U.S.C. 6301(2)(xi) shall continue to be excluded from annual and sick leave unless the exclusion is revoked by the agency under the provisions of this section.

(5 U.S.C. 6311)

[44 FR 54694, Sept. 21, 1979]

Subpart C—Annual Leave

§ 630.301 Annual leave accumulation—Senior Executive Service.

(a) In accordance with subsection (f) of section 6304 of title 5, United States Code, the limitations on accumulation of annual leave imposed by subsections (a), (b), and (c) of section 6304 do not apply to leave accrued by an individual while serving under an appointment to the Senior Executive Service under subchapter VIII of chapter 33 of such title 5.

(b) Annual leave accrued for any pay period during only a portion of which the employee served under an appointment to the Senior Executive Service shall be prorated, and only that portion of the leave that is attributable to the service in the Senior Executive Service shall not be subject to the limitations on accumulation of annual leave imposed by subsections (a), (b), and (c) of section 6304 of title 5, United States Code.

(c) When an individual who has been serving under an appointment to the Senior Executive Service moves to a position in which he or she is no longer in the Senior Executive Service, any annual leave which was accumulated while serving in the Senior Executive Service, and which is in excess of the amount allowed by subsection (a), (b), or (c) of section 6304 of title 5, United States Code, shall remain to the employee's credit and shall be subject to reduction under procedures identical to those described in subsection (c) of section 6304.

[45 FR 1592, Jan. 8, 1980]

§ 630.302 Maximum annual leave accumulation—forty-five day limitation.

(a) The effective date on which an employee (otherwise eligible thereunder) becomes subject to section 6304(b) of title 5, United States Code, is the:

(1) Date of his entry on duty when he is employed locally;

(2) Date of his arrival at a post of regular assignment for duty; or

(3) Date on which he begins to perform duty in an area outside the United States and the area of recruitment or from which transferred, when the employee is required to perform duty en route to his post of regular assignment for duty.

(b) Subject to section 6304(c) of title 5, United States Code, the maximum amount of annual leave that may be carried forward into the next leave year by an employee who is transferred or reassigned to a position in which he is no longer subject to section 6304(b) of that title is determined as follows:

(1) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is 30 days or less, he may carry forward the amount prescribed by section 6304(a) of title 5, United States Code;

(2) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is more than 30 days but not more than 45 days, he may carry forward the full amount thereof that is unused at the end of the current leave year;

(3) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is more than 45 days, he may carry forward the amount of unused annual leave to his credit at the end of the current leave year that does not exceed:

(i) 45 days, if he is not entitled to a greater accumulation under section 6304(c) of title 5, United States Code; or

(ii) The amount he is entitled to accumulate under section 6304(c) of that title, if that amount is greater than 45 days.

(c) For the purposes of paragraph (b) of this section, an agency shall determine the amount of an employee's accumulated and accrued annual leave at the end of the pay period which includes:

(1) The date on which the employee departs from his post of regular assignment for transfer or reassignment, except that when the employee is required to perform duty en route in an area in which he would be subject to section 6304(b) of title 5, United States Code, if assigned there, it is the date on which he ceases to perform the duty; or

(2) The date on which final administrative approval is given to effect a change in the employee's duty station when he is on detail or leave in the United States, or in an area (the Commonwealth of Puerto Rico or a territory or possession of the United States) from which he was recruited or transferred.

§ 630.303 Part-time employees; earnings.

A part-time employee for whom there has been established in advance a regular tour of duty on 1 or more days during each administrative workweek, and a part-time employee on a flexible work schedule for whom there has been established only a biweekly work requirement, earn annual leave as follows:

(a) An employee with less than 3 years of service earns 1 hour of annual leave for each 20 hours in a pay status.

(b) An employee with 3 but less than 15 years of service earns 1 hour of annual leave for each 13 hours in a pay status.

(c) An employee with 15 years or more of service earns 1 hour of annual leave for each 10 hours in a pay status.

(5 U.S.C. 6133(a))

[33 FR 12475, Sept. 4, 1968, as amended at 48 FR 44061, Sept. 27, 1983]

§ 630.304 Accumulation limitation for part-time employees.

A part-time employee may accumulate not more than 240 or 360 hours' annual leave on the same basis that a full-time employee may accumulate not more than 30 or 45 days' annual leave.

§ 630.305 Designating agency official to approve exigencies.

Before annual leave may be restored under section 6304 of title 5, United States Code, the determination that an exigency is of major importance and that therefore annual leave may not be used by employees to avoid forfeiture must be made by the head of the agency or someone designated by him to act for him on this matter. The designated official may not be more than two organizational levels below the head of the agency at the central headquarters levels, or more than one organizational level below the head of a major field headquarters or major field installation. Except where made by the head of the agency, the determination may not be made by any official in the immediate organizational unit affected by the exigency or by any official whose leave would be affected by the decision.

[39 FR 1575, Jan. 11, 1974]

§ 630.306 Time limit for use of restored annual leave.

Except as otherwise authorized by regulation, annual leave restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending two years after:

(a) The date of restoration of the annual leave forfeited because of administrative error; or,

(b) The date fixed by the agency head, or his designated official, as the termination date of the exigency of the public business which resulted in forfeiture of the annual leave; or,

(c) The date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of sickness.

[39 FR 1575, Jan. 11, 1974, as amended at 50 FR 3314, Jan. 24, 1985; 50 FR 29937, July 23, 1985]

§ 630.307 Time limit for use of restored annual leave—former missing employees.

Annual leave restored under section 5562 of title 5, United States Code, shall be used within a time limit to be prescribed by the Office of Personnel

Management in each case taking into consideration the amount of the restored leave and other relevant factors.

[39 FR 1575, Jan. 11, 1974]

§ 630.308 Scheduling annual leave.

Beginning with the 1974 leave year, before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

[39 FR 1575, Jan. 11, 1974]

§ 630.309 Time limit for use of restored annual leave—extended exigency of the public business.

(a) Annual leave restored under 5 U.S.C. 6304(d)(1)(B) because of an extended exigency, as defined in paragraph (b) of this section, must be scheduled and used within a time period that equals twice the number of full calendar years, or parts thereof, that the exigency existed. This time period begins at the beginning of the leave year following the leave year in which the exigency is declared to be ended.

(b) An "extended exigency" means an exigency of such significance as to—

(1) Threaten the national security, safety, or welfare;

(2) Last more than 3 calendar years;

(3) Affect a segment of an agency or occupational class; and

(4) Preclude subsequent use of both restored and accrued annual leave within the time limit specified in § 630.306.

[50 FR 29937, July 23, 1985]

Subpart D—Sick Leave

§ 630.401 Grant of sick leave.

An agency shall grant sick leave to an employee when the employee:

(a) Receives medical, dental, or optical examination or treatment;

(b) Is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement;

(c) Is required to give care and attendance to a member of his immediate family who is afflicted with a contagious disease; or

(d) Would jeopardize the health of others by his presence at his post of duty because of exposure to a contagious disease.

§ 630.402 Application for sick leave.

An employee shall file a written application for sick leave within such time limits as the agency may prescribe. An employee shall request advance approval for sick leave for medical, dental, or optical examination.

§ 630.403 Supporting evidence.

An agency may grant sick leave only when supported by evidence administratively acceptable. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his absence as evidence administratively acceptable. However, for an absence in excess of 3 workdays, or for a lesser period when determined necessary by an agency, the agency may also require a medical certificate, or other administratively acceptable evidence as to the reason for the absence.

§ 630.404 Limitation on advance sick leave.

When an employee is serving under a limited appointment or one which will be terminated on a specified date, an agency may advance sick leave to him up to the total sick leave which he would otherwise earn during the term of his appointment. For the purposes of this section, an employee serving a probationary or trial period is not serving under a limited appointment.

§ 630.405 Sickness during annual leave.

When sickness occurs within a period of annual leave, an agency may grant sick leave for the period of sickness.

§ 630.406 Part-time employees; earnings.

A part-time employee earns 1 hour of sick leave for each 20 hours in a pay status.

§ 630.407 Sick leave used in computation of annuity.

Sick leave which is used in the computation of annuity for an employee shall be charged against his sick leave account and may not thereafter be used, transferred, or recredited.

[34 FR 17617, Oct. 31, 1969]

Subpart E—Recredit of Leave

§ 630.501 Annual leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which he transfers shall certify his annual leave account to the employing agency for credit or charge.

(b) When annual leave is transferred between different leave systems under section 6308 of title 5, United States Code, or is recredited under a different leave system as the result of a refund under section 6306 of that title, 7 calendar days of annual leave are deemed equal to 5 workdays of annual leave.

(Sec. 1(2) of E.O. 11228, 3 CFR, 1964-65 Comp., p. 318)

[35 FR 18581, Dec. 8, 1970]

§ 630.502 Sick leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which he transfers shall certify his sick leave account to the employing agency for credit or charge.

(b) (1) Except as provided in paragraph (b)(2) of this section, an employee who is separated from the Federal Government or the government of the District of Columbia is entitled to a recredit of his sick leave if he is reemployed in the Federal Government or the government of the District of Columbia, without a break in service of more than 3 years.

(2) An employee who is employed by the Appalachian Regional Commission established under section 101 of title 40, App. A, United States Code, or one of the Regional Commissions established under section 3182 of title 42, United States Code, within 4 calendar days after separation from the Federal Government or the government of the District of Columbia is entitled to a recredit of his sick leave if he is reemployed by the Federal Government or the government of the District of Columbia within 6 months after separation from a continuous period of employment with one or more of the Regional Commissions established under section 101 of title 40, App. A, United States Code, or section 3182 of title 42, United States Code, that exceeds 2 years and 6 months without a break in service of more than 3 calendar days.

(c) When sick leave is transferred between different leave systems under section 6308 of title 5, United States Code, 7 calendar days of sick leave are deemed equal to 5 workdays of sick leave.

(d) An employee who transfers to a position under a different leave system to which he can transfer only a part of his sick leave is entitled to a recredit of the untransferred sick leave if he returns to the leave system under which it was earned, without a break in service of more than 3 years.

(e) An employee who transfers to a position to which he cannot transfer his sick leave is entitled to a recredit of the untransferred sick leave if he returns to the leave system under which it was earned, without a break in service of more than 3 years.

§ 630.503 Leave from former leave systems.

An employee who earned leave under the leave acts of 1936 or any other leave system merged under subchapter I of chapter 63 of title 5, United States Code, is entitled to a recredit of that leave under that subchapter if he would have been entitled to recredit for it on reentering the leave system under which it was earned. However, this section does not revive leave already forfeited.

§ 630.504 Reestablishment of leave account after military service.

When an employee leaves his civilian position to enter the military service, the agency shall certify his leave account for credit or charge. When the employee is:

(a) Restored in accordance with a right of restoration after separation from active military duty or hopitalization continuing thereafter as provided by law, or in accordance with the mandatory provisions of a statute, Executive order, or regulation; or

(b) Reemployed in a position under subchapter I of chapter 63 of title 5, United States Code, not more than 3 years after his separation from active military duty;

the agency in which he is restored or reemployed shall reestablish the certified leave account as a credit or charge.

§ 630.505 Restoration after appeal.

When an employee is restored to an agency as a result of an appeal, the agency shall reestablish his leave account as a credit or charge as it was at the time of separation.

§ 630.506 Minimum unit.

(a) When an employee moves between positions under subchapter I of chapter 63 of title 5, United States Code, in different agencies, only his leave in whole hour units may be transferred.

(b) When an employee moves between positions under subchapter I of chapter 63 of title 5, United States Code, covered by different leave charging systems within the same agency, his leave is transferable in accordance with paragraph (a) of this section, unless the agency establishes a different policy making fractions of an hour of leave transferable.

[38 FR 18446, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

Subpart F—Home Leave

AUTHORITY: Sec. 1(2) of E.O. 11228, 3 CFR, 1964-1965, Comp., p. 318.

§ 630.601 Definitions.

In this subpart:

(a) "Home leave" means leave authorized by section 6305(a) of title 5, United States Code, and earned by service abroad for use in the United States, in the Commonwealth of Puerto Rico, or in the territories or possessions of the United States.

(b) "Month" means a period which runs from a given day in 1 month through the date preceding the numerically corresponding day in the next month.

(c) "Service abroad" means service on and after September 6, 1960, by an employee at a post of duty outside the United States and outside the employee's place of residence if his place of residence is in the Commonwealth of Puerto Rico or a territory or possession of the United States.

§ 630.602 Coverage.

An employee who meets the requirements of section 6304(b) of title 5, United States Code, for the accumulation of a maximum of 45 days of annual leave earns and may be granted home leave in accordance with section 6305(a) of that title and this subpart.

§ 630.603 Computation of service abroad.

For the purpose of this subpart, service abroad:

(a) Begins on the date of the employee's arrival at a post of duty outside the United States, or on the date of his entrance on duty when recruited abroad;

(b) Ends on the date of the employee's departure from the post for separation or for assignment in the United States, or on the date of his separation from duty when separated abroad; and

(c) Includes (1) absence in a nonpay status up to a maximum of 2 workweeks within each 12 months of service abroad, (2) authorized leave with pay, (3) time spent in the Armed Forces of the United States which interrupts service abroad (but only for eligibility, not leave-earning, purposes), and (4) a period of detail.

In computing service abroad, full credit is given for the day of arrival and the day of departure.

[33 FR 12475, Sept. 4, 1968, as amended at 35 FR 14763, Sept. 23, 1970]

§ 630.604 Earning rates.

(a) For each 12 months of service abroad, an employee earns home leave at the following rate:

(1) An employee who accepts an appointment to, or occupies, a position

for which the agency has prescribed the requirement that the incumbent accept assignments anywhere in the world as the needs of the agency dictate—15 days.

(2) An employee who is serving with a U.S. mission to a public international organization—15 days.

(3) An employee who is serving at a post for which payment of a foreign or nonforeign (but not a tropical) differential of 20 percent or more is authorized by law or regulation—15 days.

(4) An employee not included in paragraph (a) (1), (2), or (3) of this section who is serving at a post for which payment of a foreign or territorial (but not a tropical) differential of at least 10 percent but less than 20 percent is authorized by law or regulation—10 days.

(5) An employee not included in paragraph (a) (1), (2), (3), or (4) of this section—5 days.

(6) An employee included under (a) (1) through (5) of this section whose civilian service abroad is interrupted by a tour of duty in the Armed Forces of the United States, for the duration of such tour—0 (zero) days.

(b) An agency shall credit home leave to an employee's leave account, as earned, in multiples of 1 day.

[33 FR 12475, Sept. 4, 1968, as amended at 35 FR 14763, Sept. 23, 1970]

§ 630.605 Computation of home leave.

(a) For each month of service abroad, an employee earns home leave under the rates fixed by § 630.604(a) in the amounts set forth in the following table:

HOME LEAVE-EARNING TABLE

[Days earned]

Months of service abroad	Earning rate (days for each 12 months)		
	15	10	5
1	1	0	0
2	2	1	0
3	3	2	1
4	5	3	1
5	6	4	2
6	7	5	2
7	8	5	2
8	10	6	3
9	11	7	3
10	12	8	4
11	13	9	4
12	15	10	5

(b) When an employee moves between different home leave-earning rates during a month of service abroad, or when a change in the differential during a month of service abroad results in a different home leave-earning rate, the agency shall credit the employee with the amount of home leave for the month at the rate to which he was entitled before the change in his home leave-earning rate.

§ 630.606 Grant of home leave.

(a) *Entitlement.* Except as otherwise authorized by statute, an employee is entitled to home leave only when he has completed a basic service period of 24 months of continuous service abroad. This basic service period is terminated by (1) a break in service of 1 or more workdays, or (2) an assignment (other than a detail) to a position in which an employee is no longer subject to section 6305(a) of title 5, United States Code.

(b) *Agency authority.* A grant of home leave is at the discretion of an agency. An agency may grant home leave in combination with other leaves of absence in accordance with established agency policy.

(c) *Limitations.* An agency may grant home leave only:

(1) For use in the United States, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(2) During an employee's period of service abroad, or within a reasonable period after his return from service abroad when it is contemplated that he will return to service abroad immediately or on completion of an assignment in the United States.

Home leave not granted during a period named in paragraph (c)(2) of this section may be granted only when the employee has completed a further substantial period of service abroad. This further substantial period of service abroad may not be less than the tour of duty prescribed for the employee's post of assignment, except when the agency determines that an earlier grant of home leave is warranted in an individual case.

(d) *Charging of home leave.* The minimum charge for home leave is 1 day and additional charges are in multiples thereof.

(e) *Refund for home leave.* An employee is indebted for the home leave used by him when he fails to return to service abroad after the period of home leave, or after the completion of an assignment in the United States. However, a refund for this indebtedness is not required when (1) the employee has completed not less than 6 months' service in an assignment in the United States following the period of home leave; (2) the agency determines that the employee's failure to return was due to compelling personal reasons of a humanitarian or compassionate nature, such as may involve physical or mental health or circumstances over which the employee has no control; or (3) the agency which granted the home leave determines that it is in the public interest not to return the employee to his overseas assignment.

§ 630.607 Transfer and recredit of home leave.

An employee is entitled to have his home leave account transferred or recredited to his account when he moves between agencies or is reemployed without a break in service of more than 90 days.

Subpart G—Shore Leave

AUTHORITY: 5 U.S.C. 6305.

§ 630.701 Coverage.

This subpart applies to an employee as defined in section 6301 of title 5, United States Code, who is regularly assigned to duties aboard an oceangoing vessel. An employee is considered to be regularly assigned when his continuing duties are such that all or a significant part of them require that he serve aboard an oceangoing vessel. Temporary assignments of a shore-based employee, such as for limited work projects or for training, do not constitute a regular assignment.

§ 630.702 Definitions.

(a) "Oceangoing vessel" means a vessel in use on the high seas or the Great Lakes; but does not include a vessel which operates primarily on rivers, other lakes, bays, sounds or within the 3-nautical-mile limit of the coastal area of the 48 contiguous States, except when used in mapping, charting, or surveying operations or when in or sailing to or from foreign, territorial, Hawaiian, or Alaskan waters, or waters outside its normal area of operations or outside the 3-nautical-mile limit.

(b) "Voyage" means the sailing of an oceangoing vessel from one port and its return to that port or the final port of discharge.

(c) "Extended voyage" means a voyage of not less than 7 consecutive calendar days duration.

(d) "Shore leave" means leave authorized by section 6305(c) of title 5, United States Code, and this subpart.

§ 630.703 Computation of shore leave.

(a) An employee earns shore leave at the rate of 1 day of shore leave for each 15 calendar days of absence on one or more extended voyages.

(b) (1) For an employee who is an officer or crewmember, a voyage begins either on the date he assumes his duties aboard an oceangoing vessel to begin preparation for a voyage or on the date he comes aboard when a voyage is in progress. The voyage terminates on the date he ceases to be an officer or crewmember of the oceangoing vessel or on the date on which he is released from assignment of his duties relating to that voyage aboard the oceangoing vessel at the port of origin or port of final discharge, whichever is earlier.

(2) For an employee other than an officer or crewmember, a voyage begins on the date of sailing and terminates on the date the oceangoing vessel returns to a port at which the employee will disembark in completion of his assignment aboard the vessel, or

on the date he is released from his assignment aboard the vessel, whichever is earlier.

(c) In computing days of absence, an agency shall include (1) the beginning date of a voyage and the termination date of a voyage; (2) the days an employee spends traveling to join an oceangoing vessel to which assigned when the vessel is at a place other than the port of origin; (3) the days an employee spends traveling between oceangoing vessels when the employee is assigned from one vessel to another; (4) the period representing the number of days within which an employee is reasonably expected to return to the port of origin when his oceangoing vessel's voyage is terminated, or his employment as an officer or crewmember is terminated, at a port other than the port of origin; (5) for an employee who is an officer or crewmember, the days on which he is on sick leave when he becomes sick during a voyage (whether or not continued as a member of the crew) but not beyond the termination date of the voyage of the oceangoing vessel or his repatriation to the port of origin, whichever is earlier; (6) for an employee other than an officer or crewmember, the days on which he is carried on sick leave but not beyond the date on which he returns to the port of origin or the termination date of the voyage, whichever is earlier; and (7) the days of approved leave from a vessel (paid or unpaid) during a voyage.

§ 630.704 Granting shore leave.

(a) *Authority.* (1) An employee has an absolute right to use shore leave, subject to the right of the head of the agency to fix the time at which shore leave may be used.

(2) Shore leave may be granted during a voyage only when requested by an employee.

(3) An employee shall submit his request for shore leave in writing and whenever an employee's request for shore leave is denied, the denial shall be in writing.

(b) *Accumulation.* Shore leave is in addition to annual leave and may be accumulated for future use without limitation.

(c) *Charge for shore leave.* The minimum charge for shore leave is one day and additional charges are in multiples thereof.

(d) *Lump-sum payment.* Shore leave may not be the basis for lump-sum payment on separation from the service.

(e) *Terminal leave.* (1) Except as provided by paragraph (e)(2) of this section, an agency shall not grant shore leave to an employee as terminal leave. For the purpose of this paragraph terminal leave is approved absence immediately before an employee's separation when an agency knows the employee will not return to duty before the date of his separation.

(2) An agency shall grant shore leave as terminal leave when the employee's inability to use shore leave was due to circumstances beyond his control and not due to his own act or omission.

(f) *Forfeiture of shore leave.* Shore leave not granted before (1) separation from the service, or (2) official assignment (other than by temporary detail) to a position in which the employee does not earn shore leave, is forfeited. When an official assignment will result in forfeiture of shore leave, the agency to the extent administratively practicable shall give an employee an opportunity to use the shore leave he has to his credit either before the reassignment or not later than 6 months after the date of his reassignment when the agency is unable to grant the shore leave before the reassignment.

Subpart H—Funeral Leave

AUTHORITY: Sec. 1, 82 Stat. 1151; 5 U.S.C. 6326.

SOURCE: 34 FR 13655, Aug. 26, 1969, unless otherwise noted.

§ 630.801 Applicability.

This subpart and section 6326 of title 5, United States Code, apply to the granting of funeral leave to an employee in connection with the funeral of, or memorial service for, his immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the armed forces in a combat zone.

§ 630.802 Coverage.

This subpart applies to:

(a) An employee as defined in section 2105 of title 5, United States Code, who is employed by an executive agency as defined in section 105 of title 5, United States Code; and

(b) An individual who is employed by the government of the District of Columbia.

§ 630.803 Definitions.

(a) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) "Combat zone" means those areas determined by the President in accordance with section 112 of the Internal Revenue Code.

(c) "Employee" means an employee or individual covered by § 630.802.

(d) "Immediate relative" means the following relatives of the deceased member of the armed forces:

(1) Spouse, and parents thereof;

(2) Children, including adopted children, and spouses thereof;

(3) Parents;

(4) Brothers and sisters, and spouses thereof; and

(5) Any individual related by blood or affinity whose close association with the deceased was such as to have been the equivalent of a family relationship.

(e) "Funeral leave" means leave authorized by section 6326 of title 5, United States Code, and this subpart.

§ 630.804 Granting of funeral leave.

(a) An agency shall grant an employee such funeral leave as is needed and requested by him, not to exceed 3 workdays, without loss of or reduction in pay, leave to which he is otherwise entitled, or credit for time or service, and without adversely affecting his performance or efficiency rating. Funeral leave is granted to allow an employee to make arrangements for, or to attend, the funeral or memorial service for an immediate relative who died as the result of a wound, disease, or injury incurred while serving as a member of the armed forces in a combat zone. The 3 days need not be consecutive but if not, the employee shall furnish the approving authority satisfactory reasons justifying a grant of funeral leave for nonconsecutive days.

(b) An agency may grant funeral leave only from a prescribed tour of duty, including regularly scheduled overtime, or, in the case of a substitute employee in the postal field service, from a period during which, except for absence on funeral leave, the employee would have worked.

PART 715—NONDISCIPLINARY SEPARATIONS, DEMOTIONS, AND FURLOUGHS

Subpart A—[Reserved]

Subpart B—Voluntary Separations

Sec.

715.201 Applicability.
715.202 Resignation.

Subpart A—[Reserved]

Subpart B—Voluntary Separations

§ 715.201 Applicability.

This subpart applies to separation actions requested by employees in the executive departments and independent establishments of the Federal Government, including Government-owned or controlled corporations, and in those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service.

(5 U.S.C. 1302, 3301, 3302, 7301; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306)

[33 FR 12482, Sept. 4, 1968]

§ 715.202 Resignation.

(a) *General.* An employee is free to resign at any time, to set the effective date of his resignation, and to have his reasons for resigning entered in his official records.

(b) *Withdrawal of resignation.* An agency may permit an employee to withdraw his resignation at any time before it has become effective. An agency may decline a request to withdraw a resignation before its effective date only when the agency has a valid reason and explains that reason to the employee. A valid reason includes, but is not limited to, administrative disruption or the hiring or commitment to hire a replacement. Avoidance of adverse action proceedings is not a valid reason.

(5 U.S.C. 1302, 3301, 3302, 7301; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306)

[33 FR 12482, Sept. 4, 1968, as amended at 36 FR 9765, May 28, 1971; 38 FR 18446, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

PART 720—AFFIRMATIVE EMPLOYMENT PROGRAMS

NOMENCLATURE CHANGE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subpart A—Principal Statutory Requirements

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720.101 Federal Equal Opportunity Recruitment Program.

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Subparts D-I—[Reserved]

Subpart J—Equal Opportunity Without Regard to Politics or Marital Status

720.901 Equal opportunity without regard to politics or marital status.

APPENDIX—GUIDELINES FOR THE DEVELOPMENT OF A FEDERAL RECRUITMENT PROGRAM TO IMPLEMENT 5 U.S.C. SECTION 7201, AS AMENDED

AUTHORITY: 5 U.S.C. 7201; 42 U.S.C. 2000e.

SOURCE: 44 FR 22031, Apr. 13, 1979, unless otherwise noted.

Subpart A—Principal Statutory Requirements

§ 720.101 Federal Equal Opportunity Recruitment Program.

This section incorporates the statutory requirements for establishing and conducting an equal opportunity recruitment program consistent with law within the Federal civil service. The policy in 5 U.S.C. 7201(b) reads as follows: "It is the policy of the United States to insure equal employment opportunities for employees without discrimination because of race, color, religion, sex, or national origin. The President shall use his existing authority to carry out this policy." 5 U.S.C. 7201(c) requires under regulations prescribed by the Office of Personnel Management:

"(1) That each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the [anti-discrimination] policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

"(2) That the Office conduct a continuing program of—

"(A) Assistance to agencies in carrying out programs under paragraph (1) of this subsection; and

"(B) Evaluation and oversight of such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation."

This section and all implementing guidance shall be interpreted consistent with title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.

[44 FR 22031, Apr. 13, 1979, as amended at 48 FR 193, Jan. 4, 1983]

Subpart B—Federal Equal Opportunity Recruitment Program

§ 720.201 Regulatory requirements.

This subpart contains the regulations of the Office of Personnel Management which implement the above provisions of title 5, United States Code, and are prescribed by the Office under authority of 5 U.S.C. 7201.

§ 720.202 Definitions.

For the purposes of this subpart:

(a) "Underrepresentation" means a situation in which the number of women or members of a minority group within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage women or the minority constitutes within the civilian labor force of the United States, in accordance with § 720.205 (c) and (d).

(b) "Category of civil service employment" means such groupings of Federal jobs by grades and/or occupations as the Office of Personnel Management deems appropriate within the General Schedule and the prevailing wage systems.

(c) "Minority" refers only to those groups classified as "minority" for the purpose of data collection by the Office of Personnel Management and the Equal Employment Opportunity Commission in furtherance of Federal equal employment opportunity policies. The term, "women," includes nonminority as well as minority women.

(d) "Civilian labor force" (CLF) includes all persons 16 years of age and over, except those in the armed forces, who are employed or who are unemployed and seeking work. CLF data are defined by the Bureau of the Census and the Bureau of Labor Statistics and are reported in the most recent decennial or mid-decade census, or current population survey, under title 13 of the United States Code or any other reliable statistical study.

(e) "Recruitment" means the total process by which the Federal Government and the Federal agencies locate, identify and assist in the employment of qualified applicants from underrepresented groups for job openings in categories of employment where underrepresentation has been determined. It includes both innovative internal and external recruitment actions. It is also intended to cover processes designed to prepare qualifiable applicants (those who have the potential but do not presently meet valid qualification requirements) for such job openings through programs of training, work experience or both.

(f) "Applicant pool" means all types of listings from which selections may be made, including (but not limited to) promotion lists, competitive certificates and inventories of eligibles, applicant supply files, and lists of eligibles for certain noncompetitive appointments.

§ 720.203 Responsibilities of the Office of Personnel Management.

(a) The Office of Personnel Management will provide appropriate data to assist Federal agencies in making determinations of underrepresentation. The process for making such determinations is described in sections II and III (c) of the "Guidelines for the Development of a Federal Recruitment Program to Implement 5 U.S.C. 7201, as amended" (See Appendix to this part). The Office will develop and publish more specific criteria for statistical measurements to be used by individual agencies, and will develop further guidance on—

(1) Agency employment statistics and civilian labor force statistics to be used in making determinations of underrepresentation, on a national, regional or other geographic basis as appropriate;

(2) Groupings of grades and/or other occupational categories to be used in implementing agency programs;

(3) Occupational categories and job series for which expanded external recruitment efforts are most appropriate, and those for which expanded and innovative internal recruitment is appropriate; and

(4) Other factors which may be considered by the agency, in consultation with Office of Personnel Management,

to make determinations of underrepresentation and to develop recruitment programs focused on specific occupational categories.

(b) The Office will assist agencies in carrying out their programs by—

(1) Identifying major recruitment sources of women and members of minority groups and providing guidance on internal and external recruitment activities directed toward the solution of specific underrepresentation problem;

(2) Supplementing agency recruitment efforts, utilizing existing networks for dissemination of job information, and involving the participation of minority group and women's organizations where practicable;

(3) Examining existing Federal personnel procedures to identify those which (i) may serve as impediments to innovative internal and external recruitment and (ii) are within the administrative control of the Office or the Federal agencies;

(4) Determining whether applicant pools used in filling jobs in a category of employment where underrepresentation exists include sufficient candidates from any underrepresentated groups, except where the agency controls such pools (see § 720.204(c));

(5) Providing such other support, as the Office deems appropriate.

(c) The Office will monitor and, in conjunction with the personnel management evaluation program of the Office, evaluate agency programs to determine their effectiveness in eliminating underrrepresentation.

(d) The Office will work with agencies to develop effective mechanisms for providing information on Federal job opportunities targeted to reach candidates from underrepresented groups.

(e) The Office will conduct a continuing program of guidance and instruction to supplement these regulations.

(f) The Office will coordinate further activities to implement equal opportunity recruitment programs under this subpart with the Equal Employment Opportunity Commission consistent with law, Executive Order 12067, and Reorganization Plan No. 1 of 1978.

§ 720.204 Agency programs.

(a) Each Executive agency having positions in the pay systems covered by this program must conduct a continuing program for the recruitment of minorities and women for positions in the agency and its components to carry out the policy of the United States to insure equal employment opportunities without discrimination because of race, color, religion, sex or national origin. The head of each agency must specifically assign responsibility for program implementation to an appropriate agency official. All agency officials who have responsibility for the program will be evaluated on their effectiveness in carrying it out as part of their periodic performance appraisals.

(b) Programs established under this subpart must be designed to cover recruitment for all positions in pay plans covered by this program including part-time and temporary positions.

(c) Where an agency or the Office of Personnel Management has determined that an applicant pool does not adequately provide for consideration of candidates from any underrepresented group, the agency or agency component must take one or more of the following actions:

(1) Expand or otherwise redirect their recruitment activities in ways designed to increase the number of candidates from underrepresented groups in that applicant pool;

(2) Use selection methods involving other applicant pools which include sufficient numbers of members of underrepresented groups;

(3) Notify the office responsible for administering that applicant pool, and request its reopening of application receipt in support of expanded recruitment activities or certifying from equivalent registers existing in other geographic areas; and/or

(4) Take such other action consistent with law which will contribute to the elimination of underrepresentation in the category of employment involved.

(d) Agencies must notify and seek advice and assistance from the Office of Personnel Management in cases where their equal opportunity recruitment programs are not making measurable progress in eliminating identified underrepresentation in the agency work force.

§ 720.205 Agency plans.

(a) Each agency must have an up-to-date equal opportunity recruitment program plan covering recruitment for positions at various organizational levels and geographic locations within the agency. Such plans must be available for review in appropriate offices of the agency and must be submitted to the Office of Personnel Management on request. In accordance with agreement reached between the Office and the Equal Employment Opportunity Commission, such plans must be incorporated in the agency's equal employment opportunity plans required under section 717 of the Civil Rights Act of 1964, as amended, pursuant to regulations and instructions of the Commission, provided they are separable parts of those plans for purposes of review by and submission to the Office of Personnel Management. Agency organizational and geographical components which are required to develop and submit Equal Employment Opportunity plans, under instructions issued by the Equal Employment Opportunity Commission, must also have up-to-date special recruitment program plans. On a determination by the Office of Personnel Management, in consultation with EEOC, that additional component plans are needed to implement an agency's program effectively, the Office will instruct the agency to develop additional plans. Agencies must comply with such instructions.

(b) Agency plans must include annual specific determinations of underrepresentation for each group and must be accompanied by quantifiable indices by which progress toward eliminating underrepresentation can be measured.

(c) Where an agency or agency component is located in a geographical area where the percentage of underrepresented groups in the area civilian labor force is higher than their percentage in the national labor force, the agency or component must base its plans on the higher level of representation in the relevant civilian labor force.

(d) Where an agency or agency component is located in a geographical area where participation of a particular underrepresented group is significantly lower than its participation in the national labor force, the agency or component may, in consultation with the Office of Personnel Management, use the lower percentage in determining underrepresentation. An agency may not use a figure lower than the relevant regional or nationwide labor force percentage where recruitment on a regional or nationwide basis is feasible for particular categories of employment. Factors such as size of the agency or unit, nature of jobs and their wage or pay scale may be considered in focusing recruitment for various job categories.

(e) In addition to the underrepresentation determinations described in paragraphs (b), (c) and (d) of this section, agency plans must, at a minimum, include:

(1) An assessment of grades or job categories and numbers of jobs in such categories expected to be filled in the current year, and on a longer term basis (based on anticipated turnover, expansion, hiring limits and other relevant factors) identification of those occupational categories and positions suitable for external recruitment, and description of special targeted recruitment programs for such jobs and positions;

(2) A similar assessment for job categories and positions likely to be filled by recruitment from within the agency and/or the Federal civil service system and a description of recruitment programs developed to increase minority and female candidates from internal sources for such positions;

(3) A further assessment of internal availability of candidates from underrepresentated groups for higher job progressions by identifying job-related skills, knowledges and abilities which may be obtained at lower levels in the same or similar occupational series, or through other experience;

(4) A description of methods the agency intends to use to locate and develop minority and female candidates for each category of underrepresenta-

tion and an indication of how such methods differ from and expand upon the recruitment activities of the agency prior to establishment of the special recruitment program or the last revision to the agency's plans;

(5) A description of specific, special efforts planned by the agency (or agency component) to recruit in communities, educational institutions, and other likely sources of qualified minority and female candidates;

(6) A description of efforts which will be undertaken by the agency to identify jobs which can be redesigned so as to improve opportunities for minorities and women, including jobs requiring bilingual or bicultural capabilities or not requiring English fluency.

(7) A list of priorities for special recruitment program activities based on agency identification of:

(i) Immediate and longer range job openings for each occupational/grade-level grouping for which underrepresentation has been determined;

(ii) Hiring authorities which may be used to fill such jobs;

(iii) The possible impact of its actions on underrepresentation.

(8) Identification of training and job development programs the agency will use to provide skills, knowledge and abilities to qualify increased numbers of minorities and women for occupational series and grade levels where they are significantly underrepresented.

(9) Identification of problems for which the assistance of the Office of Personnel Management is needed and will be requested.

(f) Equal opportunity recruitment program plans must be consistent with agency Upward Mobility program plans and should be developed with full consideration of the agency's overall recruiting and staffing planning objectives.

(g) All plans required under this subpart must be developed not later than October 1, 1979.

[44 FR 22031, Apr. 13, 1979, as amended at 44 FR 33046, June 8, 1979]

§ 720.206 Selection guidelines.

This subpart sets forth requirements for a recruitment program, not a selection program. Nevertheless, agencies are advised that all selection processes including job qualifications, personnel procedures and criteria must be consistent with the Uniform Guidelines on Employee Selection Procedures (43 FR 38290; August 25, 1978).

§ 720.207 Reports.

(a) Not later than November 1 of each year, agencies must submit an annual report on their equal opportunity recruitment program to the Office of Personnel Management, in a form prescribed by the Office. The Office may require submission of any additional reports it considers necessary in carrying out its responsibilities under this subpart.

(b) The Office will report to Congress on the implementation and operation of the program on a Governmentwide basis not later than January 31 of each year, as required by law. Such reports will include assessments of agencies progress, or lack of progress, in meeting the objectives of the program.

Subpart C—Disabled Veterans Affirmative Action Program

AUTHORITY: 5 U.S.C. 7201; 42 U.S.C. 2000e; 38 U.S.C. 101(2), 2011(3), 2014; 5 U.S.C. 3112; 29 U.S.C. 791(b).

SOURCE: 48 FR 193, Jan. 4, 1983, unless otherwise noted.

§ 720.301 Purpose and authority.

This subpart sets forth requirements for agency disabled veteran affirmative action programs (DVAAPs) designed to promote Federal employment and advancement opportunities for qualified disabled veterans. The regulations in this subpart are prescribed pursuant to responsibilities assigned to the Office of Personnel Management (OPM) under section 403 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2014), and section 307 of the Civil Service Reform Act of 1978 (5 U.S.C. 3112).

§ 720.302 Definition.

As used in this subpart, the terms "veteran" and "disabled veteran" have the meanings given to these terms in title 38 of the United States Code.

§ 720.303 Agency programs.

(a) *Continuing Programs.* Each Department, agency, and instrumentality in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, shall conduct a continuing affirmative program for the recruitment, hiring, placement, and advancement of disabled veterans.

(b) *Program Responsibility.* The head of each agency shall assign overall program responsibility to an appropriate agency official. The official so designated shall be at a high enough level to ensure effective program administration and the devotion of adequate resources to the program.

(c) *Problem Analysis.*

(1) Annually, OPM will provide appropriate data on the employment of disabled veterans to each agency participating in the Central Personnel Data File (CPDF). These data will be taken from CPDF. For DVAAP purposes, CPDF data are considered to be the offical record of the status of disabled veteran employment within each participating agency. Each participating agency is responsible for assuring that such records are timely, accurate, and complete.

(2) CPDF data must be analyzed by participating agencies to identify problem areas and deficiencies in the employment and advancement of disabled veterans. (OPM will establish with each agency not participating in CPDF, the nature and extent of data to be used in identifying problems and deficiencies.) Based on this analysis, agencies shall develop methods to improve the recruitment, hiring, placement, and advancement of disabled veterans, or revise or redirect existing methods, as necessary. These methods must then be translated into action items.

§ 720.304 Agency plan.

(a) *Plan Development.* As part of the affirmative action plan it prepares pursuant to section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791 (b)) ("Section 501(b) Plan"), each Department, agency, or instrumentality in the executive branch must have an up-to-date affirmative action plan for the employment and advancement of disabled veterans.

(1) Each agency must review its plan on an annual basis, together with its accomplishments for the previous fiscal year, updated employment data, and any changes in agency mission or structure, and update the plan as necessary. Agency operating components and field installations required to develop separate plans under paragraph (b) of this section, below, must perform the same type of annual review and update of their plans.

(2) Plans shall cover a time period of not less than one year and may cover a longer period if concurrent with the agency's Section 501(b) Plan. Each plan must specify the period of time it covers.

(3) Initial plans for fiscal year 1983 required under this subpart must be developed by January 30, 1983 and must be in effect on that day.

(b) *Plan Coverage.*

(1) Each agency must have an agencywide plan covering all of its operating components and field installations. Agencywide plans shall include instructions assigning specific responsibilities on affirmative actions to be taken by the agency's various operating components and field installations to promote the employment and advancement of disabled veterans. OPM must be informed when headquarters offices require plans at the field or installation level.

(2) Agency operating components and field installations must have a copy of the plan covering them, and must implement their responsibilities under it. OPM may require operating components and field installations to develop separate plans in accordance with program guidance and/or instructions.

(c) *Plan Submission.* Affirmative action plans developed under this section shall be submitted to OPM upon request. The Office of Personnel Management will review a selection of agency plans each fiscal year.

(d) *Plan Certification.* Each agency must certify to OPM by December 1 of each year that it has an up-to-date plan as required by this section. This certification must indicate the date the agency's most recent plan was effective or was last amended.

(e) *Plan Content.* Disabled veteran affirmative action plans shall, at a minimum, contain:

(1) A statement of the agency's policy with regard to the employment and advancement of disabled veterans, especially those who are 30 percent or more disabled.

(2) The name and title of the official assigned overall responsibility for development and implementation of the action plan.

(3) An assessment of the current status of disabled veteran employment within the agency, with emphasis on those veterans who are 30 percent or more disabled.

(4) A description of recruiting methods which will be used to seek out disabled veteran applicants, including special steps to be taken to recruit veterans who are 30 percent or more disabled.

(5) A description of how the agency will provide or improve internal advancement opportunities for disabled veterans.

(6) A description of how the agency will inform its operating components and field installations, on a regular basis, of their responsibilities for employing and advancing disabled veterans.

(7) A description of how the agency will monitor, review, and evaluate its planned efforts, including implementation at operating component and field installation levels during the period covered by the plan.

§ 720.305 Agency accomplishment reports.

(a) Not later than December 1 of each year, agencies must submit an annual accomplishment report on their disabled veterans affirmative action program to the Office of Personnel Management, covering the previous fiscal year.

(b) Agency annual accomplishment reports must describe:

(1) Methods used to recruit and employ disabled veterans, especially those who are 30 percent or more disabled.

(2) Methods used to provide or improve internal advancement opportunities for disabled veterans.

(3) A description of how the activities of major operating components and field installations were monitored, reviewed, and evaluated.

(4) An explanation of the agency's progress in implementing its affirmative action plan during the fiscal year. Where progress has not been shown, the report will cite reasons for the lack of progress, along with specific plans for overcoming cited obstacles to progress.

§ 720.306 Responsibilities of The Office of Personnel Management

(a) *Program Review.* OPM will monitor agency program implementation through review of agency plans, direct agency contact, review of employment data, and through other appropriate means. As it deems appropriate, OPM will conduct onsite evaluations of program effectiveness, both at agency headquarters and at field installations or operating components.

(b) *Technical Assistance.* The Office of Personnel Management will provide technical assistance, guidance, instructions, data, and other information as appropriate to supplement and support agency programs for disabled veterans, through the Federal Personnel Manual (FPM).

(c) *Semiannual Reports.* As provided by 38 U.S.C. 2014(d), OPM will, on at least a semiannual basis, publish reports on Government-wide progress in implementing affirmative action programs for disabled veterans.

(d) *Report to Congress.* As required by 38 U.S.C. 2014(e), OPM will report to Congress each year on the implementation and progress of the program. These reports will include specific assessments of agency progress or lack of progress in meeting the objectives of the program.

§ 720.307 Interagency report clearance.

The reports contained in this regulation have been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 0305-OPM-AN.

Subparts D–I—[Reserved]

Subpart J—Equal Opportunity Without Regard to Politics or Marital Status

§ 720.901 Equal opportunity without regard to politics or marital status.

(a) *In appointments and position changes.* In determining the merit and fitness of a person for competitive appointment or appointment by noncompetitive action to a position in the competitive service, an appointing officer shall not discriminate on the basis of the person's political affiliations, except when required by statute, or on the basis of marital status

(b) *In adverse actions and termination of probationers.* An agency may not take an adverse action against an employee covered by Part 752 of this chapter, not effect the termination of a probationer under Part 315 of this chapter, (1) for political reasons, except when required by statute, or (2) because of marital status.

(5 U.S.C. 2301, 2302, 7202, 7203, 7204)

[44 FR 48149, Aug. 17, 1979]

APPENDIX—GUIDELINES FOR THE DEVELOPMENT OF A FEDERAL RECRUITMENT PROGRAM TO IMPLEMENT 5 U.S.C. SECTION 7201, AS AMENDED [1]

I. *Background Information.* A. In 1964 the Congress adopted a basic anti-discrimination policy for Federal employment, stating:

> It is the policy of the United States to insure equal employment opportunities for employees without discrimination because of race, color, religion, sex or national origin. [5 U.S.C. 7151][2]

In 1978, Congress reaffirmed and amended this policy as part of the Civil Service Reform Act of 1978 [Sec. 310 of Pub. L. 95-454], requiring immediate development of a recruitment program designed to eliminate underrepresentation of minority groups in specific Federal job categories. Section 310 directs the Equal Employment Opportunity Commission:

1. To establish Guidelines proposed to be used for a program designed to eliminate such underrepresentation;
2. To make, in consultation with OPM, initial determinations of underrepresentation which are proposed to be used in this program; and
3. To transmit the determinations made under (2) above to the Executive Agencies, the Office of Personnel Management and the Congress, within 60 days of enactment.

The Office of Personnel Management (OPM)[3] is directed by this amendment:

1. To issue regulations to implement a program under EEOC Guidelines within 180 days after enactment, which shall provide that Executive agencies conduct continuing recruitment programs to carry out the anti-discrimination policy in a manner designed to eliminate underrepresentation in identified categories of civil service;
2. To provide continuing assistance to Federal agencies in carrying out such programs;
3. To conduct a continuing program of evaluation and oversight to determine the effectiveness of such programs;
4. To establish occupational, professional and other groupings within which appropriate recruitment will occur, based upon the determinations of underrepresentation pursuant to these Guidelines; and
5. To report annually to the Congress on this program, not later than January 31 of each year.

Congress further directed that the recruitment program must be administered consistent with provisions of Reorganization Plan No. 1 of 1978.[4]

B. In framing these Guidelines and making its initial determinations of underrepresentation, the Equal Employment Opportunity Commission (Commission) is acting pursuant to its obligations and authority under 5 U.S.C. 7201, as amended; Section 717 of title VII of the Civil Rights Act of 1964, as amended; Reorganization Plan No. 1 of 1978 (issued pursuant to 5 U.S.C. 901 et seq.) and Executive Order 12067, issued under this Plan (43 FR 28967, June 30, 1978). This Commission must develop and/or ensure the development of uniform, coherent and effective standards for administration and enforcement of all Federal anti-discrimination and equal employment opportunity laws, policies and programs, and to ensure the elimination of duplication and inconsistency in such programs.

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[1] This Section originally was Section 701(b) (2nd Proviso) of the Civil Rights Act of 1964 (Pub. L. 88-352, July 2, 1964), codified as 5 U.S.C. 7151. Section 7151 was further amended by Section 310 of the Civil Service Reform Act of 1978. This Act also redesignated Section 7151 as Section 7201, effective January 11, 1979. (Sec. 703(a)(1) of the Act.)

[2] *Ibid.*

[3] This Office was created by Reorganization Plan No. 2, issued pursuant to 5 U.S.C. 901 *et seq.* It will assume personnel management functions of the present Office of Personnel Management on January 1, 1979.

[4] *Conference Report on Civil Service Reform Act of 1978,* No. 95-1272, p. 145.

C. A review of the legislative history of Federal equal employment opportunity policy provides further guidance on the scope and nature of determinations and guidelines to be issued for this program.

The basic policy statement on Federal equal employment policy enacted by the Congress in 1964 (5 U.S.C. 7151, redesignated as section 7201) gave the President authority for implementation. Executive Order 11246 (1966), expanded and superseded by Executive Order 11478 (1969) with respect to Federal employment, required Federal agencies to develop affirmative action programs designed to eliminate discrimination and assure equal employment opportunity.

In 1972, Congress found that serious discrimination persisted in Federal employment. It found that minorities and women were significantly absent at higher levels in Federal employment, and severely underrepresented in some Federal agencies and in some geographic areas where they constituted significant proportions of the population. After a detailed review of Federal employment practices and statistics, the Congress concluded that:

The disproportionate distribution of minorities and women throughout the Federal bureaucracy and their exclusion from higher level policy-making and supervisory positions indicates the government's failure to pursue its policy of equal employment opportunity.[5]

Congress found that this exclusion resulted from overt and "systemic" discriminatory practices.

These findings, among others, led Congress to extend title VII coverage to Federal employment in Section 717 of the Equal Employment Opportunity Act of 1972.

The Civil Service Reform Act of 1978 clearly states, for the first time, that "it is the policy of the United States * * * to provide * * * a Federal workforce reflective of the Nation's diversity * * *"[6] The Act establishes in law as the first merit principle that recruitment should be designed to achieve a Federal workforce from "all segments of society." Among the personnel practices prohibited by the Act is discrimination prohibited under title VII of the Civil Rights Act of 1964, as amended.[7] Therefore, the Civil Service Reform Act and its directive for a special recruitment program clearly unite requirements for basic Federal personnel policy with requirements for Federal equal employment policy.

It is clear from the legislative history of Federal equal employment policy that the legal standards of title VII must be applied to Federal employment. Thus, guidelines for a recruitment program designed to eliminate underrepresentation in Federal agency employment must be developed consistent with the framework of affirmative action programs.

D. Guided by the review of the legislative history, and the responsibilities and authorities cited in I(B) of this appendix, the Commission is issuing these Guidelines to provide a framework for development of recruitment program regulations by OPM. The Commission may later provide more detailed guidance, through consultation with OPM, designed to achieve an overall Federal equal employment program which is consistent with, and which effectively implements title VII requirements.

II. *Initial Determinations of Underrepresentation.* A. Pursuant to Section 7201, underrepresentation exists when the percentages of minority and female Federal employees in specific grades are less than their percentages in the civilian labor force. "Minority" refers only to those groups classified as "minority" for the purpose of data collection by the Commission and OPM in furtherance of Federal equal employment opportunity policies. The civilian labor force includes all persons 16 years of age and over except the armed forces, who are employed or seeking employment. Such a determination of underrepresentation is designated in these Guidelines as "below the Section 7201 level".

B. The Commission has examined existing data on Federal employment and the civilian labor force and has made initial determinations of underrepresentation of groups by race, national origin and sex in specific grades of the major Federal pay systems, under the legal authorities cited in I(B), of this appendix.

C. The Table which follows shows the grades at which the percentage of each group in the Federal workforce falls below its percentage in the civilian labor force. The table covers four major Federal pay systems which account for more than 95 percent of Federal employees, excluding the Postal Service.[8]

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[5] *Legislative History of the Equal Employment Opportunity Act of 1972,* p. 83. See pp. 82-86 and 421-425 for Congressional Findings.

[6] Civil Service Reform Act of 1978, Section 3.

[7] Section 101(a) of the Act, 5 U.S.C. 2301(b)(1) and 2302(b)(1)(A), as amended.

[8] The initial determinations are based on data for only those agencies covered by the

Continued

Civilian Labor Force and Federal Employment Grades at Which Minorities and Women Are Below the 7201 Level, by Selected Pay Systems, and by Sex, Race, and National Origin—1977

Sex/Race/National Origin	Percent of Civilian Labor Force	Grades Below the 7201 Level			
		Gen Sched and Equivalent	Non-spvsry Regular Wage	Leader Regular Wage	Spvsry Regular Wage
Number of Grades		18	15	15	19
Women	41.0	9+	2+	2+	All
White	34.0	9+	All	All	All
Black	4.6	11+	5+	5+	5+
Hispanic	1.7	6+	All	2, 4+	All
AsAm/Pacis	.6	1, 10+	2+	2+	All
Amin/AlNa	.1	13+	9+	1, 5, 6, 9+	4, 9, 11+
Minority Men	8.9	3+	13+	11, 14+	13+
Black	5.3	4, 6+	12+	11+	11+
Hispanic	2.8	All	14+	1, 15	13-15, 17+
AsAm/Pacis	.7	1-8, 10, 16+	9, 14+	1, 3, 8, 9, 12+	1, 3, 8, 9, 17+
Amin/AlNa	.2	None	14	1, 13+	17+

NOTES.—1. Comparable data for white men shown below are for reference.

White Men	50.1	1-8	1-4	1-5	1-3

2. + means "and all grades above".
3. Detail may not add to total because of rounding.

Sources: Civilian Labor Force information based on data from the Current Population Survey, Bureau of Labor Statistics, *Employment and Earnings*, Vol. 25, No. 1, January 1978.

Information on grades below 7201 level based on Office of Personnel Management data from *Equal Employment Opportunity Statistics*, November 20, 1977 (publication in process).

D. The initial determinations of underrepresentation were based upon average 1977 labor force data from the Current Population Survey published by the Bureau of Labor Statistics (*Employment and Earnings*, January 1978), and 1977 Federal workforce statistics from *Equal Employment Opportunity Statistics* (publication in process).

The labor force figures are published annually; the Federal employment statistics semiannually. These measures, and any modifications agreed upon by the Commission and OPM, will be updated annually.

Regional and area Federal employment statistics are available from the Office of Personnel Management. The latest reliable local labor force data by race, national origin, and sex is from the 1970 Census. The Commission and OPM will consult on appropriate labor force measures to be used for local analyses.

E. These initial determinations are based upon a preliminary analysis of the data, and may be further refined by the Commission, in consultation with OPM, to include geographic and occupational underrepresentation. It is further recognized that for the purpose of developing regulations, the OPM, in consultation with the Commission, will undertake more specific analyses of data use and applicability necessary to develop programs for the Federal agencies pursuant to Section 7201(a)(2)(C). The OPM may establish criteria for grouping agencies, for treating agency components separately and for grouping grades and pay systems. In addition, OPM may study other available data sources and use other techniques to assure statistically significant findings of underrepresentation. Based upon these studies, OPM may make recommendations to the Commission for future determinations of underrepresentation.

III. *Procedures for Developing Recruitment Programs.* A. The program developed and implemented by OPM under Section 7201 should be designed to result in applicant pools with sufficient qualified members of underrepresented groups. Where the supply of such groups initially appears to be low for specific occupational, professional and other groupings, the program should be designed so that recruitment efforts stimulate interest of underrepresented groups in those occupations where there are realistic projections of Federal employment opportunities.

B. In establishing groupings for determining underrepresentation, OPM should utilize broad occupational categories to the extent possible.

Civil Service Reform Act of 1978. The Commission will make subsequent determinations on other agencies covered by title VII, e.g. the U.S. Postal Service, TVA, Central Intelligence Agency, Federal Reserve Board.

C. The Commission recognizes that OPM's regulations should allow flexibility in development and design of each Federal agency's recruitment program. However, all statistical comparisons must be computed in a manner consistent with the method utilized in II C of this appendix.

The Commission recommends that each agency program meet several minimum requirements. The program should be based on a determination of underrepresentation in the agency's total workforce, in appropriate geographic components; by grade; by broad occupational, professional and other groupings in comparison to the national civilian labor force, according to the criteria developed by OPM under these guidelines.

Where an agency or major component thereof (such as Headquarters and Regional Offices) is located in a geographic area where the percentage of underrepresented groups in the area civilian labor force is *higher* than their percentage in the national labor force, the agency or appropriate component should conduct its recruitment program for that component on the basis of the higher level of representation in the relevant civilian labor force.

Where an agency or major component thereof is located in a geographic area where participation of a particular underrepresented group in the area labor force is significantly *lower* than their participation in the national labor force, such agency or component may, in consultation with OPM, utilize the lower applicable civilian labor force percentage in determining underrepresentation for the component. In no event, however, may the agency utilize a figure lower than the regional or nationwide Section 7201 level for positions where recruitment on a regional or nationwide basis is feasible. Factors such as size of the agency or unit, nature of jobs and their wage or pay scale may be considered to set goals and to justify a recruitment program focused on various job categories.

IV. *Scope of Actions Covered by This Program.* A. "Recruitment" under this program is defined as the total process by which the Federal Government and the Federal agencies locate, identify and assist in the employment of qualified or qualifiable applicants from underrepresented groups for job openings in grades and in occupational categories where underrepresentation has been determined. This process should include innovative internal, as well as targeted external, recruitment actions.

B. Prior to developing regulations, the Office should review data on personnel actions and other information, to identify those job categories for which internal recruitment and external recruitment is most appropriate and feasible, and to provide guidance to the Federal agencies for targeting their recruitment programs, based on this information. OPM should advise all agencies that all job qualifications, personnel procedures and criteria must be consistent with the *Uniform Guidelines on Employee Selection Procedures* (43 FR 38290 August 25, 1978) OPM should consider the following in providing guidance to agencies:

1. *External Recruitment Programs.* a. Such programs should focus on grade levels and/or job categories where underrepresentation has been identified and where external recruitment realistically will result in hiring opportunities.

Recruitment programs also should include a review of job functions to determine those jobs that may be better performed by persons who are bicultural and who have bilingual capabilities, and those jobs that can be performed by persons not fluent in English.

b. Where eligibility lists are used for filling jobs, it is recommended that the regulations require, an analysis by race, national origin and sex, to determine whether the list contains sufficient candidates from groups underrepresented in those jobs. OPM should require that where the list does not have such representation, expanded recruitment procedures be designed to assure that members of underrepresented groups qualified to perform the job(s) are included in the pool of applicants from which the selecting official makes the selection. Such expanded recruitment procedures may include additional external recruitment or various actions (such as described in 2. below) to reach members of these groups within the Federal workforce who are qualified or qualifiable for these jobs.

2. *Internal Recruitment Programs.* a. Internal recruitment programs should be designed by agencies to identify currently qualified or qualifiable persons for job categories and series where underrepresentation prevails, according to the national determinations and the determinations made by each agency under these guidelines.

b. Further, OPM should work with Federal agencies to develop effective mechanisms for providing information on Federal job opportunities, targeted to reach Federal employees from underrepresented groups in all agencies in order to broaden the applicant pool.

V. *Consistency with Reorganization Plan No. 1 of 1978.* A. The Office shall develop regulations and implement this program in consultation with the Commission and with other affected agencies in such manner that their recruitment programs may be incorporated as a consistent and effective element of the agencies' national and regional equal employment opportunity plans. Each agency is required to implement such plans under the direction and guidance of the Commission in accordance with Section 717 of title VII of the Civil Rights Act of 1964, as amended, and Executive Order 12067.

B. Procedures shall be established by OPM and the Commission to assure appropriate consultation in development of the regulations.

C. Pursuant to Reorganization Plan No. 1 and to Executive Order 12067 issued thereunder, the Commission will establish procedures to provide appropriate consultation and review of the program on a continuing basis, to maximize its effectiveness and eliminate any duplication, conflict or inconsistency in requirements for equal opportunity programs in the Federal agencies.

D. In preparing its annual report to the Congress pursuant to the Act, OPM should do so in consultation with the Commission.

[44 FR 22031, Apr. 13, 1979; 44 FR 76747, Dec. 28, 1979]

PART 731—SUITABILITY

NOMENCLATURE CHANGE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subpart A—[Reserved]

Subpart B—Suitability Disqualifications

Sec.

731.201 Authority.
731.202 OPM determination.

Subpart C—Suitability Rating Actions

731.301 Jurisdiction.
731.302 Actions OPM and other agencies.
731.303 Debarment.

Subpart D—Appeal to the Merit Systems Protection Board

731.401 Right to appeal.

Subpart E—Reemployment Eligibility

731.501 Reemployment eligibility of certain former Federal employees.

AUTHORITY: 5 U.S.C. 3301, 3302, 7301; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Suitability Disqualifications

§ 731.201 Authority.

Subject to Subpart C of this part OPM may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee when OPM determines this action will promote the efficiency of the service.

[40 FR 28047, July 3, 1975]

§ 731.202 OPM determination.

(a) *General.* In determining whether its action will promote the efficiency of the service, OPM shall make its determination on the basis of:

(1) Whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance in the position applied for or employed in; or

(2) Whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance by the employing agency of its duties and responsibilities.

(b) *Specific factors.* Among the reasons which may be used in making a determination under paragraph (a) of this section, any of the following reasons may be considered a basis for disqualification:

(1) Delinquency or misconduct in prior employment;

(2) Criminal, dishonest, infamous or notoriously disgraceful conduct;

(3) Intentional false statement or deception or fraud in examination or appointment;

(4) Refusal to furnish testimony as required by § 5.4 of this chapter;

(5) Habitual use of intoxicating beverages to excess;

(6) Abuse of narcotics, drugs, or other controlled substances;

(7) Reasonable doubt as to the loyalty of the person involved to the Government of the United States; or

(8) Any statutory disqualification which makes the individual unfit for the service.

(c) *Additional considerations.* In making its determination under paragraph (a) of this section, OPM shall consider the following additional factors to the extent that these factors are deemed pertinent to the individual case:

(1) The kind of position for which the person is applying or in which the person is employed, including its sensitivity;

(2) The nature and seriousness of the conduct;

(3) The circumstances surrounding the conduct;

(4) The recency of the conduct;

(5) The age of the applicant or appointee at the time of the conduct;

(6) Contributing social or environmental conditions;

(7) The absence or presence of rehabilitation or efforts toward rehabilitation.

(d) *Implementation.* Policies, procedures, criteria, and guidance for the implementation of this Part shall be set forth in issuances of the Federal Personnel Manual System and other appropriate instruments. Agencies exercising authority under this Part by delegation from OPM shall conform to such policies, procedures, criteria, and guidance.

[40 FR 28047, July 3, 1975, as amended at 49 FR 1870, Jan. 16, 1984]

Subpart C—Suitability Rating Actions

§ 731.301 Jurisdiction.

(a) *Appointments subject to investigation.* (1) In order to establish an appointee's qualifications and suitability for employment in the competitive service, every appointment to a position in the competitive service is subject to investigation by OPM, except:

(i) Promotion;

(ii) Demotion;

(iii) Reassignment;

(iv) Conversion from career-conditional to career tenure;

(v) Appointment, or conversion to an appointment, made by an agency of an employee of that agency who has been serving continuously with that agency for at least one year in one or more positions in the competitive service under an appointment subject to investigation; and

(vi) Transfer, provided the one-year, subject-to-investigation period applied to the previous appointment has expired.

(2) Appointments are subject to investigation to continue OPM's jurisdiction to investigate the qualifications and suitability of an applicant after appointment and to authorize OPM to require removal when it finds the appointee is disqualified for Federal employment. The subject-to-investigation condition may not be construed as requiring an employee to serve a new probationary or trial period or as extending the probationary or trial period of an employee.

(b) *Duration of condition.* The subject-to-investigation condition expires automatically at the end of 1 year after the effective date of appointment, except in a case involving intentional false statement or deception or fraud in examination or appointment.

[33 FR 12483, Sept. 4, 1968, as amended at 49 FR 1870, Jan. 16, 1984]

§ 731.302 Actions by OPM and other agencies.

(a) For a period of 1 year after the effective date of an appointment subject to investigation under § 731.301, OPM may instruct an agency to remove an appointee when it finds that the appointee is not qualified or is unsuitable for any of the reasons cited in § 731.202.

(b) Thereafter, OPM may require the removal of an employee on the basis of either intentional false statement or deception or fraud in examination or appointment; or refusal to furnish testimony.

(c) An action to remove an appointee or employee taken pursuant to an instruction by OPM is not subject to Part 752 of this chapter. Part 752 of this chapter applies when removal or other disciplinary action covered by that part is initiated by an agency.

(d) When the Office instructs an agency to remove an appointee under this part it shall notify the agency and the appointee of its decision in writing, giving reasons for the decision, and informing the agency and the appointee of the right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The Office shall comply with the provisions of § 1201.21 of this title.

(e) Before OPM shall take a final suitability disqualification action against an applicant, eligible, appointee, or employee under this Part, the person against whom the action is proposed shall be given notice of the proposed action, an opportunity to answer, notice of the final decision of the action, and notice of rights of appeal, if any, all in accordance with 5 CFR Part 754. Before any agency having delegated authority from OPM under this Part takes a final suitability disqualification action against any person under this Part, the agency shall give such person the same notices and opportunities that OPM would be required to give in such a case under 5 CFR Part 754.

(5 U.S.C. 7701, et seq.)

[39 FR 32540, Sept. 9, 1974, as amended at 40 FR 28048, July 3, 1975; 44 FR 48954, Aug. 21, 1979; 49 FR 1870, Jan. 16, 1984; 49 FR 5601, Feb. 14, 1984]

§ 731.303 Debarment.

When a person is disqualified for any reason named in § 731.202, OPM, in its discretion, may deny that person examination for and appointment to a competitive position for a period of not more than 3 years from the date of determination of disqualification. On expiration of the period of debarment, the person who has been debarred may not be appointed to any position in the competitive service until his fitness for appointment has been redetermined by OPM.

[33 FR 12483, Sept. 4, 1968, as amended at 40 FR 28048, July 3, 1975]

Subpart D—Appeal to the Merit Systems Protection Board

§ 731.401 Right to appeal.

(a) Any applicant or eligible who is disqualified from examination or appointment by the Office for any reason named in § 731.202 may appeal to the Merit Systems Protection Board under the Board's regulations.

(b) An appointee who is disqualified by the Office for any reason named in § 731.202 or his or her employing agency may appeal to the Board under the Board's regulations.

(1) An appointee who appeals a removal directed by OPM shall notify the agency of his appeal prior to the effective date of the action.

(2) When OPM has instructed the agency to remove an appointee and either the agency or the appointee appeals, the agency shall suspend the appointee effective the day following the date on which the removal was to have been effected pending adjudication of the appeal unless the agency desires to retain the appointee in an active duty status for that period, in which event the agency shall so notify the appointee. Part 752 of this chapter does not apply to the suspension.

(5 U.S.C. 7701, et seq.)

[39 FR 32541, Sept. 9, 1974, as amended at 40 FR 28048, July 3, 1975; 44 FR 48954, Aug. 21, 1979]

Subpart E—Reemployment Eligibility

§ 731.501 Reemployment eligibility of certain former Federal employees.

(a) *Request for suitability determination.* When an employee has been removed by an agency on charges (other than security or loyalty) or has resigned on learning the agency planned to prefer charges, or while charges were pending, the former employee may request OPM to determine his eligibility for further employment in the competitive service, insofar as his suitability and fitness are concerned. OPM shall consider the request only if the former employee:

(1) Has completed any required probationary period;

(2) Has basic eligibility for reinstatement; and

(3) Includes a sworn statement with the request which sets forth fully and in detail the facts surrounding his removal or resignation.

(b) *Action by OPM.* (1) After appropriate consideration, including such investigation as OPM considers necessary, OPM shall inform the former employee whether it has found him suitable for further employment in the competitive service.

(2) If the former employee is found unsuitable and has had an opportuni-

ty to comment on the reasons for this finding, or has furnished his comments to OPM, it may cancel his reinstatement eligibility if that eligibility resulted from his last Federal employment and was obtained through fraud. In addition, OPM may prescribe a period of debarment from the competitive service not to exceed three years.

[39 FR 32541, Sept. 9, 1974]

PART 732—PERSONNEL SECURITY AND RELATED PROGRAMS

Subparts A-C—[Reserved]

Subpart D—Security and Related Determinations

§ 732.401 Reemployment eligibility of certain former Federal employees.

(a) *Request.* A former employee who was terminated, or who resigned while suspended or while charges were pending, from a department or agency of the Government under a statute or executive order authorizing termination in the interest of national security, in the interest of the United States, or on grounds relating to loyalty, and authorizing OPM to determine his eligibility for employment in another department or agency of the Government, may request OPM in writing to determine whether he is eligible for employment in another department or agency of the Government.

(b) *Action by OPM.* (1) OPM shall determine, and will notify the former employee, after appropriate consideration of his case, including such investigation as it considers necessary, whether he may be employed in another department or agency of the Government.

(2) If a former Federal employee found unsuitable under this section has had an opportunity to comment on the reasons for the action, or has furnished them to OPM or to his former employing agency, OPM may also cancel his reinstatement eligibility if the eligibility resulted from his last Federal employment and was obtained through fraud, or OPM may prescribe a period of debarment from the competitive service, not to exceed 3 years, or both.

(5 U.S.C. 3301, 3302, 7312; 50 U.S.C. 403; E.O. 10450, 3 CFR, 1949-1953 Comp., p. 936; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218)

[33 FR 12484, Sept. 4, 1968]

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

Subpart A—The Competitive Service

GENERAL PROVISIONS

Sec.
733.101 Definitions.

PERMISSIBLE ACTIVITIES

733.111 Permissible activities.

PROHIBITED ACTIVITIES

733.121 Use of official authority; prohibition.
733.122 Political management and political campaigning; prohibitions.
733.123 Prohibited activity; exception of certain employees.
733.124 Political management and political campaigning; exception of certain elections.

Subpart B—The Excepted Service

733.201 Jurisdiction.

Subpart C—The U.S. Postal Service

733.301 Jurisdiction.

AUTHORITY: 5 U.S.C. 3301, 3302, 7301, 7321, 7322, 7323, 7324, 7325, and 7327; Reorganization Plan No. 2 of 1978, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264, unless otherwise noted.

SOURCE: 35 FR 16785, Oct. 30, 1970, unless otherwise noted.

Subpart A—The Competitive Service

GENERAL PROVISIONS

§ 733.101 Definitions.

In this subpart:

(a) "Employee" means an individual who occupies a position in the competitive service;

(b) "Agency" means an executive agency and the government of the District of Columbia;

(c) "Political party" means a National political party, a State political party, and an affiliated organization;

(d) "Election" includes a primary, special, and general election;

(e) "Nonpartisan election" means—

(1) An election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and

(2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character; and

(f) "Partisan" when used as an adjective refers to a political party.

(g) "Political fund" means any fund, organization, political action committee, or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or anything of value or transfers money or anything of value to any other fund, political party, candidate, organization, political action committee, or other entity.

(h) "Contribution" means any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.

(i) "Federal workplace" means any place, site, installation, building, room, or facility in which any Executive department or agency conducts official business, including, but not limited to, office buildings, forts, arsenals, navy yards, post offices, vehicles, ships, and aircraft.

(j) "Employer" or "employing authority" means the immediate employing agency head, agency principals, or an employee's supervisor.

[35 FR 16785, Oct. 30, 1970, as amended at 49 FR 17432, Apr. 24, 1984]

PERMISSIBLE ACTIVITIES

§ 733.111 Permissible activities.

(a) All employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this subpart. Each employee retains the right to—

(1) Register and vote in any election;

(2) Express his opinion as an individual privately and publicly on political subjects and candidates;

(3) Display a political picture, sticker, badge, or button;

(4) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(5) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(6) Attend a political convention, rally, fund-raising function; or other political gathering;

(7) Sign a political petition as an individual;

(8) Make a financial contribution to a political party or organization;

(9) Take an active part, as an independent candidate, or in support of an independent candidate, in a partisan election covered by § 733.124;

(10) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;

(11) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(12) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law; and

(13) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his efficiency or integrity as an employee or the neutrality, efficiency, or integrity of his agency.

(b) Paragraph (a) of this section does not authorize an employee to engage in political activity in violation of law, while on duty, or while in a uniform that identifies him as an employee. The head of an agency may prohibit or limit the participation of an employee or class of employees of his agency in an activity permitted by paragraph (a) of this section, if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interests.

PROHIBITED ACTIVITIES

§ 733.121 Use of official authority; prohibition.

An employee may not use his official authority or influence for the purpose of interfering with or affecting the result of an election.

§ 733.122 Political management and political campaigning; prohibitions.

(a) An employee may not take an active part in political management or in a political campaign, except as permitted by this subpart.

(b) Activities prohibited by paragraph (a) of this section include but are not limited to—

(1) Serving as an officer of a political party, a member of a National, State, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;

(2) Organizing or reorganizing a political party organization or political club;

(3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;

(4) Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party, or political club;

(5) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;

(6) Becoming a candidate for, or campaigning for, an elective public office in a partisan election;

(7) Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;

(8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

(9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

(10) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature, or similar material;

(11) Serving as a delegate, alternate, or proxy to a political party convention;

(12) Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;

(13) Initiating or circulating a partisan nominating petition;

(14) Soliciting, collecting, or receiving a contribution at or in the Federal workplace from any employee for any political party, political fund, or other partisan recipient;

(15) Paying a contribution at or in the Federal workplace to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient; and

(16) Soliciting, paying, collecting, or receiving a contribution at or in the Federal workplace from any employee for any political party, political fund, or other partisan recipient.

[35 FR 16785, Oct. 30, 1970, as amended at 41 FR 49473, Nov. 9, 1976; 49 FR 17433, Apr. 24, 1984]

§ 733.123 Prohibited activity; exception of certain employees.

(a) Sections 733.121 and 733.122 do not apply to an employee of an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

(b) Section 733.122 does not apply to—

(1) An individual exempted under section 7324(d) of title 5, United States Code;

(2) An employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to

political activities involving that municipality;

(3) Subject to the conditions of § 733.124, an employee who resides in a municipality or other political subdivision designated by OPM under that section; or

(4) An employee who works on an irregular or occasional basis, on the days that he performs no services.

§ 733.124 Political management and political campaigning; exception of certain elections.

(a) Section 733.122 does not prohibit activity in political management or in a political campaign by an employee in connection with—

(1) A nonpartisan election, or

(2) Subject to the conditions and limitations established by OPM, an election held in a municipality or political subdivision designated by OPM under paragraph (b) of this section.

(b) For the purpose of paragraph (a)(2) of this section, the Office may designate a municipality or political subdivision in Maryland or Virginia in the immediate vicinity of the District of Columbia or a municipality in which the majority of voters are employed by the Government of the United States, when the Office determines that, because of special or unusual circumstances, it is in the domestic interest of employees to participate in local elections. Information as to the documentation required to support a request for designation is furnished by the Office on request. The following municipalities and political subdivisions have been designated, effective on the date specified:

In Maryland

Annapolis (May 16, 1941).
Anne Arundel County (March 14, 1973).
Berwyn Heights (June 15, 1944).
Bethesda (Feb. 17, 1943).
Bladensburg (Apr. 20, 1942).
Bowie (Apr. 11, 1952).
Brentwood (Sept. 26, 1940).
Capitol Heights (Nov. 12, 1940).
Cheverly (Dec. 18, 1940).
Chevy Chase, sections 1 and 2 (Mar. 4, 1941).
Chevy Chase, section 3 (Oct. 8, 1940).
Chevy Chase, section 4 (Oct. 2, 1940).
Martin's Additions 1, 2, 3, and 4 to Chevy Chase (Feb. 13, 1941).
Chevy Chase View (Feb. 26, 1941).
College Park (June 13, 1945).
Cottage City (Jan. 15, 1941).
District Heights (Nov. 2, 1940).
Edmonston (Oct. 24, 1940).
Fairmont Heights (Oct. 24, 1940).
Forest Heights (Apr. 22, 1949).
Garrett Park (Oct. 2, 1940).
Glenarden (May 21, 1941).
Glen Echo (Oct. 22, 1940).
Greenbelt (Oct. 4, 1940).
Howard County (Apr. 25, 1974).
Hyattsville (Sept. 20, 1940).
Kensington (Nov. 8, 1940).
Landover Hills (May 5, 1945).
Montgomery County (Apr. 30, 1964).
Morningside (May 19, 1949).
Mount Rainier (Nov. 22, 1940).
New Carrollton (July 7, 1981).
North Beach (Sept. 20, 1940).
North Brentwood (May 6, 1941).
North Chevy Chase (July 22, 1942).
Northwest Park (Feb. 17, 1943).
Prince Georges County (June 19, 1962).
Riverdale (Sept. 26, 1940).
Rockville (Apr. 15, 1948).
Seat Pleasant (Aug. 31, 1942).
Somerset (Nov. 22, 1940).
Takoma Park (Oct. 22, 1940).
University Park (Jan. 18, 1941).
Washington Grove (Apr. 5, 1941).

In Virginia

Alexandria (Apr. 15, 1941).
Arlington County (Sept. 9, 1940).
Clifton (July 14, 1941).
Fairfax County (Nov. 10, 1949).
Town of Fairfax (Feb. 9, 1954).
Falls Church (June 6, 1941).
Herndon (Apr. 7, 1945).
Loudoun County (Oct. 1, 1971).
Manassas (Jan. 8, 1980).
Manassas Park (Mar. 4, 1980)
Portsmouth (Feb. 27, 1958).
Prince William County (Feb. 14, 1967).
Stafford County (Nov. 2, 1979).
Vienna (Mar. 18, 1946).

Other Municipalities

Anchorage, Alaska (Dec. 29, 1947).
Benicia, Calif. (Feb. 20, 1948).
Bremerton, Wash. (Feb. 27, 1946).
Centerville, Ga. (Sept. 16, 1971).
Crane, Ind. (Aug. 3, 1967).
District of Columbia (July 5, 1977).
Elmer City, Wash. (Oct. 28, 1947).
Huachuca City, Ariz. (Apr. 9, 1959).
New Johnsonville, Tenn. (Apr. 26, 1956).
Norris, Tenn. (May 6, 1959).
Port Orchard, Wash. (Feb. 27, 1946).
Sierra Vista, Ariz. (Oct. 5, 1955).
Warner Robins, Ga. (Mar. 19, 1948).

(c) An employee who resides in a municipality or political subdivision listed in paragraph (b) of this section may take an active part in political management and political campaigns in connection with partisan elections for local offices of the municipality or political subdivision, subject to the following limitations:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for, and service in, an elective office shall not result in neglect of or interference with the performance of the duties of the employee or create a conflict, or apparent conflict, of interests.

(5 U.S.C. 7701, et seq.)

[35 FR 16785, Oct. 30, 1970]

EDITORIAL NOTE: For Federal Register citations affecting § 733.124, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart B—The Excepted Service

§ 733.201 Jurisdiction.

Sections 733.111-733.124 apply to an employee in the excepted service. It is the responsibility of the employing agency to investigate and decide allegations of prohibited political activity on the part of such an employee.

Subpart C—The U.S. Postal Service

§ 733.301 Jurisdiction.

Sections 733.101 (c), (d), (e), and (f) through 733.124 apply to an employee of the U.S. Postal Service.

(5 U.S.C. 7701, et seq.)

[44 FR 48954, Aug. 21, 1979]

PART 734—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

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APPENDIX A TO PART 734—CERTIFICATE OF INDEPENDENCE
APPENDIX B TO PART 734—CERTIFICATE OF COMPLIANCE

AUTHORITY: Titles II and IV of Pub. L. 95-521 (October 26, 1978), as amended by Pub. L. 96-19 (June 13, 1979), 5 U.S.C. Appendix 994; Pub. L. 98-150 (November 11, 1983).

SOURCE: 45 FR 69777, Oct. 21, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 734.101 Authority.

The regulations in this part are issued pursuant to the authority of Titles II and IV of the Ethics in Government Act of 1978, ("the Act") (Pub. L. 95-521, as amended).

§ 734.102 Purpose.

These regulations supplement and implement Title II of the Act, set forth more specifically certain procedures provided in that title and furnish examples, where appropriate.

§ 734.103 Agency regulations.

Each agency may, subject to the prior approval of the Office of Government Ethics, issue regulations implementing this part. These regulations—

(a) Shall be consistent with the Act and with this part, and

(b) Shall impose no additional reporting requirements on individuals subject to the Act, except as may be specifically authorized by statute or by approval of the Office of Government Ethics. Requests for this approval shall be submitted in writing to the Office, setting forth the need for any additional reporting requirements by the agency involved.

§ 734.104 Policies.

(a) (1) Title II of the Ethics in Government Act of 1978 requires high-level Federal executives to disclose their personal financial interests and thereby demonstrate that they are able to carry out their duties without compromising the public trust. Public confidence in Government goes hand in hand with an open Government. Title II extends the cleansing principle of "Sunshine" to consideration of conflicts of interest.

(2) Title II, as amplified and implemented by these regulations of this Part 734, will serve to deter conflicts of interest and to identify potential conflicts of interest in the case of newcomers to Government service by providing for a systematic review of the financial holdings of both current and prospective officers and employees.

(3) Statements of income, assets and liabilities must be reported by the President and Vice President of the United States, presidential appointees, those in the Senior Executive Service, those in confidential or policymaking positions (Schedule C), and civil service employees in grades GS-16 and above (and the equivalent), including comparable officers in the uniformed and foreign services. These reports are available to the public. If anyone uses them for commercial or credit rating reasons or in connection with the solicitation of money for any political, charitable or similar purpose, the Attorney General may institute a civil action against such a person which may result in a penalty not to exceed $5,000.

(4) The reports are not net worth statements. Only assets held as investments and certain other items must be recorded—not items for personal use, such as a residence or jewelry not held for sale. In most instances, specific values are not called for but rather items may be reported by six categories of value ranging from "$1,001 to $5,000" to "greater than $250,000" as the highest category.

(5) The reports do not cover certain contributions under the Federal Election Campaign Act or certain gifts under the Foreign Gifts Act; see § 734.301(c).

(6) Nothing in the Act or this part requiring reporting of information or the filing of any report shall be deemed to authorize the receipt of income, gifts, or reimbursements, the holding of assets, liabilities, or positions, or involvement in transactions that are prohibited by law, Executive order or regulation.

(7) Personnel below the grade of GS-16 continue to remain subject to the financial reporting requirements contained in the Office of Personnel Management's regulations contained in Part 735 of this title. These statements, however, are confidential and are not available for public inspection.

(b) The provisions of Title II of the Act and this part requiring the reporting of information shall supersede any general requirement relating to individuals specified by § 734.202, under any other provision of law or regulation on the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of Title II and this part shall not supersede the requirements of 5 U.S.C. 7342 (relating to the Foreign Gifts Act).

§ 734.105 Definitions.

For purposes of this part:

Act. The term "Act" means the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended).

Advisory committee. The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group which is established—

(1) By statute or reorganization plan,

(2) By the President, or

(3) By one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government; such term includes any subcommittee or other subgroup of any advisory committee, but does not include the Advisory Commission on Intergovernmental Relations and the Commission on Government Procurement. For purposes of this definition "agency" has the meaning given that term by 5 U.S.C. 551(1).

Agency. The term "agency" means any executive department, military department, Government corporation or independent establishment or agency.

Dependent child. The term "dependent child" means, when used with respect to any reporting individual, a son, daughter, stepson, or stepdaughter who—

(1) Is unmarried and under age 21 and is living in the household of the reporting individual, or

(2) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954.

Designated agency ethics official. The term "designated agency ethics official" means an officer or employee who is designated by the head of the agency to administer the provisions of Title II of the Act and this part within an agency, or the delegate of such an official.

Executive branch. The term "executive branch" includes each executive department, military department, Government corporation and independent establishment and any other entity or administrative unit in the executive branch unless such agency, entity or unit is specifically included in the coverage of Title I (relating to the legislative branch) or Title III (relating to the judicial branch) of the Act.

Gift. The term "gift" means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include—

(1) Bequests and other forms of inheritance,

(2) Suitable mementos of a function honoring the reporting individual,

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government,

(4) Food and beverages consumed at banquets, receptions, or similar events, or

(5) Communications to the offices of a reporting individual including subscriptions to newspapers and periodicals.

Honoraria. The term "honoraria" has the meaning given such term for purposes of the Federal Election Campaign Act of 1971. An honorarium is defined in the regulations of the Federal Election Commission as a payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration or an appearance, speech, or article. The term does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals of an officer or employee and spouse or an aide, and does not include amounts paid or incurred for any agent's fees or commissions. See also the definitions of "Gift" and "Reimbursement" of this section.

Income. The term "income" means all income from whatever source derived, including but not limited to the following items: Compensation for services, including fees, commissions, and similar items; gross income derived from business and net income if the individual elects to include it; gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; net distributive share of partnership income; and income from an interest in an estate or trust. The term includes items, whether or not taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means "gross income" as determined in conformity with the principles of 26 CFR 1.61-1 through 1.61-15.

Personal hospitality of any individual. The term "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or the family of such individual or on property or facilities owned by that individual or the family of such individual.

Personal Residence. The term "personal residence" means any real property used exclusively as a private dwelling by the reporting individual or his or her spouse, which is not rented for any period during a calendar year. There may be more than one personal residence, and the term may include a vacation home. The term is not limited to domicile.

Reimbursement. The term "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(1) Provided by the United States Government,

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (relating to the Foreign Gifts Act), or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (relating to reports of campaign contributions).

Relative. The term "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, halfbrother, halfsister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual.

Reporting individual. For the definition of "reporting individual", see § 734.202.

Reviewing official. The term "reviewing official" means the designated agency ethics official, the Secretary concerned, the head of the agency, or the Director, Office of Government Ethics, as the case may be.

Secretary concerned. The term "Secretary concerned" has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy and Air Force, and certain other Secretaries), and, in addition, means—

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration, and

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.

Special Government employee. The term "special Government employee" has the meaning given that term by 18 U.S.C. 202(a).

Staff functions. The term "staff functions in support of an advisory committee" means the performance of duties with regard to matters of a substantive nature for an advisory committee. Whether generation of information is conducted independently or under the direct supervision of members of an advisory committee in fulfilling their responsibilities to advise the Executive branch, the substantive nature of the activity controls. A functional analysis of assigned subject matter responsibilities must be applied in each instance regardless of the contractual relationship between the individual performing the duties and the advisory committee. Preparation of work plans, performance of studies, drafting reports, and formulating recommendations whether preliminary or final are considered matters of a substantive nature.

Value. The term "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual. In the case of any interest in property, such estimation shall be made in accordance with the principles of § 734.303(a).

[45 FR 69777, Oct. 21, 1980, as amended at 49 FR 33116, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985]

Subpart B—Persons Required To File

§ 734.201 General requirements for filing.

(a) *Incumbents.* A reporting individual who, during any calendar year, performs the duties of his or her position or office for a period in excess of 60 days shall file a report containing the information prescribed in Subpart C of this part on or before May 15 of the succeeding year.

(b) *New entrants.* Within 30 days of assuming a new position or office described in § 734.202, a reporting individual shall file a report containing the information prescribed in Subpart C of this part, unless such individual:

(1) Has left another position referred to in § 734.202 (with respect to which a report under this section has previously been filed) within the 30 days prior to his assumption of such new position, or

(2) Has already filed such a report—

(i) As a nominee for the new position, or

(ii) As a candidate for the position.

Example (1). *Y*, a GS-16 employee of the Treasury Department (who has previously filed reports in accordance with the rules of this section) terminates employment with that Department on January 12, 1980, and begins employment with the Commerce Department on February 10, 1980, in a Senior Executive Service position. *Y* is not a new entrant since she has assumed a position described in § 734.202 within thirty days of leaving another position so described. Accordingly, she need not file a new report with the Commerce Department.

NOTE: While *Y* did not have to file a new report with the Commerce Department, that Department should request a copy of the report she had filed with the Treasury Department so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with *Y's* new employment.

Example (2): If in *Example (1)*, *Y*, had left a position with the Legislative branch in which she had been compensated at a rate equal to or in excess of GS-16, *Y* would, nevertheless, be a new entrant as her former position would not have been one described in § 734.202. *Y* would have to file a report with the Commerce Department.

(c) *Nominees.* At any time after a public announcement by the President or President-elect of his intention to nominate an individual to a position, appointment to which requires the advice and consent of the Senate, such individual may and, in any event, within five days after the transmittal of the nomination to the Senate, must file a report containing the information prescribed in Subpart C of this part.

(1) A judicial officer or employee covered by section 301(b) of the Act,

(2) An officer of the uniformed services, or

(3) A foreign service officer in the State Department (or other department or agency).

See § 734.604(c), relating to expedited procedure in the case of individuals described in the first sentence of this paragraph (c); however, those individuals referred to in paragraph (c)(2) or (c)(3) of this section, shall file their reports in accordance with paragraph (b) of this section.

(d) *Candidates.* (1) Within 30 days of becoming a candidate in a calendar year for nomination or election to the office of President or Vice President, as determined by the Federal Election Commission, or

(2) On or before May 15 of that calendar year,

whichever is later, and on or before May 15 of each successive year an individual continues to be a candidate, he or she, except for an incumbent President or Vice President, shall file a report containing the information prescribed in Subpart C of this part. Notwithstanding this requirement in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, the individual need not file a report unless he or she becomes a candidate for another vacancy in that office or another office during that year.

Example (1): The Federal Election Commission determined that *P* became a candidate for President in January of 1979. *P* will be required to file a financial disclosure report on or before May 15, 1979. If *P* had become a candidate on June 1, 1979, she would be required to file a disclosure within 30 days of that date.

Example (2): If *P* withdraws from the race in March of 1980, she will not be required to file an annual disclosure report by May 15, 1980, as she has not continued to be a candidate until that date.

(e) *Termination of employment.* On or before that thirtieth day after termination of employment from a position or office described in § 734.202, a reporting individual shall file a report containing the information prescribed in Subpart C of this part for the period from the end of the calendar year with respect to which a report was last filed pursuant to paragraph (a) of this section to the date on which the individual left such office or position. Notwithstanding the preceding sentence, in a case in which the individual assumes employment in another position or office described in § 734.202 within 30 days of such termination, no report shall be required by the provisions of this paragraph. See *Example (1)* in paragraph (b) of this section.

(f) *Extensions.* The reviewing official may, for good cause shown, grant to any employee or class of employees an extension of up to 45 days. The Director, Office of Government Ethics, for good cause shown, may grant an additional extension of up to 45 days. The employee shall set forth specific reasons for an additional extension which shall be forwarded to the Director, through the reviewing official, who shall also submit his or her comments on the request.

[45 FR 69777, Oct. 21, 1980; 45 FR 83472, Dec. 19, 1980, as amended at 49 FR 33116, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985]

§ 734.202 Reporting individual; defined.

For purposes of this part the term "reporting individual" includes—

(a) The President;

(b) The Vice President;

(c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202, whose position is classified at GS-16 or above of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than the minimum rate of basic pay fixed for GS-16; each member of a uniformed service whose pay grade is at or in excess of 0-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

Example (1): Foreign service officers in the State Department rated as FSO 1 or 2 must file a report since they have a rate of basic pay equal to or greater than the basic rate of pay fixed for GS-16.

(d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;

(e) Any employee not described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character;

(f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS-16; and

(g) The Director of the Office of Government Ethics and each designated agency official.

(h) Any individual who (1) performs staff functions (as defined in § 734.105) in support of an advisory committee which is composed, in whole or in part, of special Government employees, (2) is reasonably expected to perform these functions for more than 60 days in a calendar year as set forth in § 734.201 and (3) whose duties and responsibilities are determined by the Office of Government Ethics, in consultation with the agency served by the advisory committee, to warrant a position classification equal to or greater than one required by the minimum rate of basic pay for GS-16 of the General Schedule prescribed by 5 U.S.C. 5332.

Example (1): A corporate executive in his or her capacity as a special Government employee of an advisory committee employs the services of a staff assistant to conduct research, develop draft reports or recommendations and assist in policy formulation for the advisory committee. The staff assistant must file a financial disclosure statement if it is determined that he or she is expected to perform staff functions for more than 60 days in a calendar year and that his or her position is of a classification equal to GS-16. On the other hand, the personal secretary of a corporate executive serving on an advisory committee should not be required to file such a report simply because the secretary arranges meetings or types materials which the corporate executive uses in fulfilling advisory committee responsibilities.

Notwithstanding the provisions of paragraph (e) of this section, any employee excluded from the reporting requirements of this part by virtue etermination under § 734.203 shall not be deemed to be a reporting individual. For purposes of § 734.201(e), status as a reporting individual shall continue for a period of 30 days after termination of employment from a position or office to which this section applies.

[45 FR 69777, Oct. 21, 1980, as amended at 49 FR 33116, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985]

§ 734.203 Certain individuals excluded from reporting requirements.

(a) *In general.* Any individual or group of individuals described in § 734.202(e) (on positions of a confidential or policymaking character) may be excluded from the reporting requirements of this part in cases in which the Director, Office of Government Ethics, determines, in his or her sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) *Exclusion determinations.* The determination described in paragraph (a) of this section has been made for the following individuals and groups of individuals and, therefore, they may be excluded from the reporting requirements of this part pursuant to the provisions of paragraph (c) of this section:

(1) Individuals in any position classified below GS-16, or the rate of basic pay for which is less than the minimum rate of basic pay fixed for GS-16, who have no role in advising or making policy determinations with respect to agency programs or policies. For example, such individuals may include chauffeurs, private secretaries, stenographers and those who hold positions of similar nature where consistent with the basic criterion set forth in the preceding sentence.

(c) *Procedure.* (1) The exclusion of any individual from reporting requirements pursuant to this section will be effective as of the time the employing agency or other governmental entity files with the Office of Government Ethics a list and description of each position for which exclusion is sought, as well as the identity of its current occupant. Such a list showing any additions or deletions or a statement that there have been no changes must be filed annually with the Office of Government Ethics on or before May 15.

(2) In the event that the Office of Government Ethics finds that one or more positions has been improperly excluded, it will advise the agency or other governmental entity and set a date for the filing of the report.

§ 734.204 Employment of sixty days or less.

(a) *In general.* Any reporting individual who—

(1) As determined by the designated agency ethics official or Secretary concerned, in a case to which the provisions of § 734.201(b) or (e) would otherwise apply, or

(2) As determined by the Director, Office of Government Ethics, in a case to which the provisions of § 734.201(c) (on nominees) would otherwise apply, is not reasonably expected to perform the duties of his or her office or position for more than 60 days in a calendar year, shall not be subject to the reporting requirements of § 734.201(b), (c), or (e), respectively.

(b) *Exception.* Notwithstanding the provisions of paragraph (a) of this section, if the reporting individual performs the duties of his or her office or position for more than 60 days in a calendar year, the report otherwise required by—

(1) Section 734.201(b) or (c) shall be filed within 15 calendar days after the sixty-first day of that performance unless the individual has filed a request for a waiver under § 734.205(b), and

(2) Section 734.201(e) (on termination reports) shall be filed as provided in that paragraph.

§ 734.205 Special waiver of reporting requirements.

(a) *General rule.* In unusual circumstances, the Director, Office of Government Ethics, may grant a request for a waiver of any reporting requirement otherwise applicable under this part for an individual who is reasonably expected to perform, or has performed, the duties of his or her office or position for fewer than 130 days in a calendar year, but only if the Director determines that—

(1) The individual is a special Government employee (as defined in 18 U.S.C. 202) who performs temporary duties either on a full-time or intermittent basis,

(2) The individual is able to provide services specially needed by the Government,

(3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) Public financial disclosure by the individual is not necessary in the circumstances.

(b) *Procedure.* (1) The individual must file a request for a waiver with the Office of Government Ethics within 10 days after—

(i) The individual knows that he or she will serve more than 60 days in any calendar year, or

(ii) The expiration of the 60 days,

whichever is earlier. The request shall state the reasons the individual believes the conditions of paragraph (a)(1) through (4) of this section are met in the particular case, and the request shall be filed with the report otherwise required by this part. The report shall bear the legend at the top of page 1:

"CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR 734.205."

(2) The Office of Government Ethics shall seek advice from the agency in which the individual serves as to its views on the justification for the waiver.

(3) In the event the waiver is granted, the report shall not be subject to the public disclosure requirements of § 734.602; however, the waiver request and grant of waiver shall be subject to those requirements. In the event that the waiver is not granted, all such legends shall be removed and the report shall be subject to the public disclosure requirements; however, the waiver request shall not be subject to those requirements.

Subpart C—Contents of Reports

§ 734.301 Reports of incumbents.

Each report filed pursuant to § 734.201(a) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, on the following:

(a) *Income*—(1) *In general.* The source and amount or value of—

(i) Income, including type of income, other than that referred to in paragraph (a)(2) of this section and other than that from current employment by the United States Government, and

(ii) Any honoraria, including the date,

received during the preceding calendar year which from any source total $100 or more in value.

For special rules on spouses and dependent children, see § 734.303(b).

Example (1): The types of income which should be disclosed do include: (i) Outside earned income,

(ii) Pensions, and

(iii) A partner's net distributive share of partnership income from a commercial venture.

Example (2): An official is asked to speak at a banquet in Washington about his hobby which is unrelated to his public duties. He is given $200 for doing so. Whether or not acceptance of the payment is permitted by the regulations of his agency, the $200 received must be reported as income pursuant to paragraph (a)(1)(ii) of this section, as it is an honorarium (as defined in § 734.105(g)). The value of the meal received at the banquet need not be disclosed. (See § 734.105 (f)(4) and (g)).

Example (3): An official is a participant in a bona fide retirement plan of Coastal Airlines. Pursuant to such plan, the official and his spouse receive passage on some Coastal flights without charge; they receive passage on other flights at a discount fare. The difference between what Coastal charges members of the public generally and what the official and his wife are charged for a particular flight (if charged at all) is deemed income in-kind. Such income in-kind is required to be reported separately under paragraph (a)(1) of this section.

(2) *Certain income.* The source and type of income which consists of dividends, rents, interest, and capital gains from any source, received during the preceding calendar year which exceeds $100 in amount or value, which shall be categorized as to the total amount or value of each item in accordance with the following table:

(i) Not more than $1,000;

(ii) Greater than $1,000 but not more than $2,500;

(iii) Greater than $2,500 but not more than $5,000;

(iv) Greater than $5,000 but not more than $15,000;

(v) Greater than $15,000 but not more than $50,000;

(vi) Greater than $50,000 but not more than $100,000; and

(vii) Greater than $100,000.

Example (1): An official rents out a portion of her residence. She receives rental income of $600 from one individual for four months and $1200 from another individual for the remaining eight months of the year covered by the report. She must identify the property, and indicate the category of the amount of rent received pursuant to paragraph (a)(2) of this section.

Example (2): An official has three savings accounts with Bank A. One is in his name and earned $85 in interest. One is in a joint account with his wife and earned $120 in interest. One is in his name and his dependent daughter's name and earned $35 in interest. The official must disclose the name of the bank and the category of the total amount of interest earned from all three accounts. He must also disclose the accounts under paragraph (d) of this section if in the aggregate they total more than $5,000 in that bank.

(b) *Purchases, sales and exchanges of certain property.* A brief description (including the date) of any purchase, sale or exchange during the preceding calendar year:

(1) Of real property, other than a personal residence of the reporting individual or spouse, and

(2) Of stocks, bonds, commodities futures, and other forms of securities, which shall be categorized as to each transaction in accordance with § 734.304, in any case in which the fair market value of such property exceeds $1,000.

Notwithstanding paragraphs (b)(1) and (2) of this section, any transaction solely by and between the reporting individual, the spouse, and dependent children need not be reported. For purposes of this paragraph, transactions involving Treasury bills, money market mutual funds, and certificates of deposit issued by banking institutions are not deemed purchases, sales, or exchanges when effected at rates, terms, and conditions available generally to members of the public.

Example (1): An official sells her personal residence in Virginia for $100,000 and purchases a residence in the District of Columbia for $200,000. She realized a gain on the sale of the Virginia home of $30,000. She need not report the sale of the Virginia residence or the purchase of the D.C. residence under paragraph (b) of this section.

Example (2): An official sells his beach home in Maryland for $50,000. Because he has rented it out for one month every summer, it does not qualify as a personal residence. He must disclose the sale under paragraph (b) of this section and any capital gain realized on the sale under paragraph (a)(2) of this section.

Example (3): An official sells a ranch to his dependent daughter. The official need not report the sale under paragraph (b) of this section because it is a transaction between the reporting individual and a dependent child. If the daughter were no longer a dependent child the sale and any capital gain, except for that portion attributable to a personal residence, would have to be disclosed.

Example (4): An official sells an apartment building and realizes a loss of $100,000. He must report the sale of the building under paragraph (b) of this section, but he need not disclose the sale under paragraph (a)(2) of this section, as it did not result in a capital gain.

(c) *Gifts and reimbursements*—(1) *In general.* The identity of the source, a brief description, and the value of all gifts (other than gifts described in paragraph (c)(2) of this section) from any source other than a relative of the reporting individual, received during the preceding calendar year which total $100 or more in value. Gifts received must be reported pursuant to the requirements of this paragraph. See § 734.104(a).

Example (1): An official accepts a print, a pen and pencil set, and a letter opener from a community service organization she has worked with solely in her private capacity. If any one of the gifts is valued at at least $100, she must disclose that gift. If any one gift is valued at less than $100 she need not report the gift unless the organization had during that same reporting year given her other item(s) whose value when aggregated would equal $100 or more. For purposes of aggregation she need not count items valued at $35 or less; see paragraph (c)(5) of this section. For method of valuation see paragraph (c)(4).

Gift 1—Print: Value $75
Gift 2—Pen and pencil set: $40
Gift 3—Letter opener: $20

The official must disclose Gifts 1 and 2, but not Gift 3.

(2) *Certain gifts.* The identity of the source, a brief description, and the value of any gifts of transportation, lodging, food, or entertainment from any source other than a relative of the reporting individual, received during the preceding calendar year which total $250 or more in value. Notwithstanding the preceding sentence, any food, lodging or entertainment received as the "personal hospitality of any individual" need not be reported. (See § 734.105(i).)

Example (1): An official receives the following items from a single source:

1. Dinner at a restaurant—$50
2. Round-trip taxi fare to meet donor at the restaurant—$15.
3. Dinner at donor's city residence—(value uncertain)
4. Round-trip airline transportation to donor's country home—$200
5. Weekend at donor's country home including duck hunting and tennis match—(value uncertain)

The official need only disclose Gifts 1 and 4. Gifts 3 and 5 need not be disclosed because they fall within the exception for "personal hospitality of an individual." (See § 734.105(i).) Gift 2 while otherwise disclosable need not be aggregated with Gifts 1 and 4 because it is valued less than $35. (See paragraph (c)(4) of this section.)

Example (2): An official accepts a number of invitations for dinner at restaurants in the city. The dinners are valued at more than $35 and in the aggregate are more than $250. The invitations are for purely personal reasons and are from one individual. Nevertheless, the official must report these dinners because they do not fall within the definition of "personal hospitality of any individual." See § 734.105(i). The official can request a waiver of this reporting requirement pursuant to § 734.303(g). If granted, the waiver is public.

(3) *Reimbursements.* The identity of the source, a brief description, and the value of any reimbursements not otherwise reportable under the provisions of this subpart received during the preceding calendar year which from any source total $250 or more in value from any source.

Example (1): An official is asked to speak at an out-of-town meeting on a matter which is unrelated to his official duties and his agency. The round trip air fare is more than $250. If the official pays for the ticket and is then reimbursed by the organization to which he spoke, he must disclose this reimbursement under paragraph (c)(3) of this section. If the organization simply provided the ticket, this must be disclosed as a gift under paragraph (c)(2) of this section.

(4) *Valuation of gifts and reimbursements.* The value to be assigned to a gift or reimbursement is its fair market value. For most reimbursements this will be the amount actually received. For gifts and non-cash reimbursements the value should be determined in one of the following manners:

(i) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The reporting individual need not contact the donor but may and should contact a retail establishment selling similar items to determine the present cost in the market.

(ii) If the item is not readily available in the market, such as a piece of art, a hand-made item, or antique, the individual can, as in the case of property in § 734.303(a)(2), make a good faith estimate of the value of the item.

For purposes of this paragraph (c)(4), the term "readily available in the market" means that an item generally is available for retail purchase in the metropolitan area nearest to the official's residence.

Examples

Items such as a pen and pencil set, letter opener, leather case or engraved pen are generally available in the market and can be determined by contacting stores which sell like items and ascertaining the retail price of each.

The value of a dinner at a restaurant can either be the actual cost of the reported dinners or the approximate value of the dinner given the posted fare of the restaurant. The reporting individual need not ask the donor to see the check.

(5) *De minimis exception.* Any gift with a fair market value of $35 or less need not be aggregated for purposes of this paragraph (c). The acceptance of these gifts is subject to the restrictions imposed by Executive Order 11222 and regulations promulgated thereunder as is the acceptance of the gifts of $35 or more.

(6) *Cross-reference.* For special waiver in the case of certain gifts see § 734.303(g).

(d) *Interests in property*—(1) *In general.* A brief description of any interest in property held at the close of the preceding calendar year in a trade or business, or for investment or the production of income, having a fair market value in excess of $1,000, which shall be categorized as to the fair market value of each item in accordance with § 734.304. Each item of real and personal property shall be disclosed separately.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (d)(1) of this section, the following shall not be reported:

(i) Any personal liability owed to the reporting individual by a relative,

(ii) Personal savings accounts in a single financial institution or holdings in a single money market mutual fund, in the case of a reporting individual, spouse, and dependent children who have deposits or holdings, respectively, aggregating $5,000 or less in that institution or fund, and

(iii) A personal residence of the reporting individual or spouse.

For purposes of this paragraph (d), the term "personal savings account" means a certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

Example (1): The following items are examples of property required to be disclosed. This list is not inclusive but is presented to show typical items:

(A) Real estate other than a personal residence of a reporting individual or spouse,

(B) Stocks, bonds, securities, and commodities contracts,

(C) Animals owned for commercial purposes,

(D) Commercial crops, those growing and those held in storage,

(E) Antiques owned for resale,

(F) Beneficial interests in trusts and estates (see § 734.303(c)),

(G) Art held for investment,

(H) Pensions and annuities, and

(I) Money market mutual funds.

Example (2): An official has a $4,000 savings account in Bank A. His wife has a $2,500 certificate of deposit issued by Bank B and his daughter has a $200 savings account in Bank C. The official does not have to disclose the deposits as the total value of the deposits in any one bank do not exceed $5,000. Nevertheless, the source and amount of interest income would have to be disclosed under paragraph (a)(2) if it exceeds $100.

Example (3): Reporting individual *R* has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, *R* has made recurrent sales of both less desirable post-impressionist works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, *R* would report income from sales of any paintings pursuant to paragraph (a)(2) of this section, and all the paintings he retains as interests in property pursuant to paragraph (d) of this section. The Office of Government Ethics deems recurrent sales from a collection or related holdings to remove the collection and such holdings from the exemption for purely personal items from public financial disclosure under section 202 of the Act.

Example (4): Reporting individual *R* has several commodity transactions in calendar year 1979, as follows:

Positions, date of purchase and date of sale (includes short sales)

No. (1)-3 contracts April 1980 Gold (Comex), 4/18/79, open position [carried over to 1980]

No. (2)-2 contracts June 1980 Gold (Comex), 12/13/79, 6/19/79

No. (3)-1 contract February 1980 Gold (Comex), open position [carried over to 1980] 8/17/79

No. (4)—2 contracts August 1980 Gold (Comex), 5/13/79; 9/19/79

(i) *Position No. (1)* is an interest in property which, since it was held as of the close of calendar year 1979, is reported under paragraph (d) of this section as an interest in property (if the $1,000 fair market value criterion of paragraph (d) is met). In accordance with standard accounting practices with respect to such interests, the fair market value of a commodity contract, for purposes of this section, is determined by the amount of the net unrealized gain or loss. This item is also reported under paragraph (b) of this section as a purchase, if the $1,000 fair market value criterion of paragraph (b) is met.

(ii) The gain or loss realized with respect to the transactions relating to *Position No. (2)* (a short sale) is reported under paragraph (b) of this section as a completed purchase and sale (if the $1,000 threshold criterion of paragraph (b) is met). With respect to a completed purchase and sale such as *Position No. (2)*, the threshold criterion is applied against the net realized gain or loss. The completed purchase and sale is also reported uder paragraph (a)(2) of this section (relating to income items), if the $100 threshold criterion of paragraph (a)(2) is met. Accordingly, if the completed purchase and sale had resulted in a loss, it would not have been reportable under paragraph (a)(2).

(iii) *Position No. (3)* (notwithstanding that it is a short sale) is an interest in property which, since it was held as of the close of calendar year 1979, is reported under paragraph (d) of this section as an interest in property (if the $1,000 threshold criterion of paragraph (d) is met). This item is also reported under paragraph (b) of this section as a sale, if the $1,000 threshold criterion of paragraph (b) is met.

(iv) The gain or loss realized with respect to the transactions relating to *Position No. (4)* is reported under paragraph (b) of this section as a completed purchase and sale (if the $1,000 threshold criterion of paragraph (b) is met). The completed purchase and sale is also reported under paragraph (a)(2) of this section (relating to income items), if the $100 threshold criterion of paragraph (a)(2) is met.

(v) It should be noted that the principles of this example are applicable with respect to the purchase and sale of options contracts.

(e) *Liabilities*—(1) *In general.* A brief description of the total liabilities owed to any creditor, other than a relative, to whom, at any time during the preceding calendar year, over $10,000 is owed, which shall be categorized as to the amount of any such liability in accordance with § 734.304. The greatest amount owed to any such creditor during such period shall be reported.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (e)(1) of this section, the following shall not be reported:

(i) Any mortgage secured by a personal residence of the reporting individual or spouse,

(ii) Any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it, and

(iii) Any revolving charge account with an outstanding liability which does not exceed $10,000 as of the close of that preceding calendar year.

Example (1): An official has the following loans outstanding at the end of the calendar year:

1. Mortgage on personal residence—$80,000
2. Mortgage on rental property—$50,000
3. VISA Card—$1,000
4. Master Card—$11,000
5. Loan secured by family automobile purchased for $6,200—$5,000
6. Loan secured by antique furniture purchased for $8,000—$10,000
7. Loan from parents—$20,000

Loans indicated in items 2, 4, and 6 must be disclosed. Loan 1 is exempt from disclosure because it is secured by the personal residence. Loan 3 need not be disclosed because it is considered a revolving charge account and it is less than $10,000. Loan 5 need not be disclosed because it it secured by a personal motor vehicle and is for less than the purchase price. Loan 7 need not be disclosed because the creditor is a relative.

(f) *Other positions*—(1) *In general.* Identification of all positions held, at any time during the period beginning on January 1 of the preceding calendar year and ending on the date of filing as an officer, director, trustee, partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any non-profit organization, any labor organization, or any educational or other institution other than the United States. Notwithstanding the preceding sentence, the following need not be reported:

(i) Positions held without compensation in any religious, social, fraternal, or political entity, and

(ii) Positions solely of an honorary nature, such as those with an *emeritus* designation.

(2) *Initial reports; special rules.* In the case of a reporting individual who has not filed a report under § 734.201 during the preceding calendar year—

(i) For purposes of paragraph (f)(1) of this section, all such positions held during the preceding two calendar years shall also be reported, and

(ii) Except in the case of the President and the Vice President, identification and a brief description of the nature of the duties performed or services rendered with respect to each source of compensation which exceeded $5,000 in either of the preceding two calendar years.

Notwithstanding the provisions of paragraph (f)(2)(ii) of this section, information need not be reported which is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person, or with respect to any person for whom services were provided by any firm or association of which the reporting individual was a member, partner, or employee, unless the individual was directly involved in the provision of such services.

Example (1): A partner or employee of a law firm who has worked on a matter involving a client from which the firm received over $5,000 in fees during a calendar year must report the name of the client only if the value of the services rendered by the partner or employee was more than $5,000. The name of the client, except in unusual situations, would not be considered confidential.

(g) *Certain agreements and arrangements.* Identification of the parties to, and a brief description including the date of any agreement or arrangement, in existence at any time during the period beginning on January 1 of the preceding calendar year and ending on the date of filing, with respect to—

(1) Future employment,

(2) A leave of absence during the period of the reporting individual's Government service,

(3) Continuation of payments by a former employer other than the United States Government, and

(4) Continuing participation in an employee welfare or benefit plan maintained by a former employer. (See 18 U.S.C. 209(b)).

[45 FR 69777, Oct. 21, 1980; 45 FR 83472, Dec. 19, 1980]

§ 734.302 Reports of other reporting individuals.

(a) *New entrants, nominees, and candidates.* Each report filed under § 734.201(b), (c), or (d) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, under the provisions of § 734.301, except for paragraphs (b) (relating to purchases, sales and exchanges of certain property) and (c) (relating to gifts and reimbursements) of that section; however, the following shall also be reported:

(1) *Income.* For purposes of paragraph (a) of § 734.301, relating to income, all the income items specified in that paragraph received during a period which begins on January 1 of the preceding calendar year and ends on the date on which the report is filed (except as otherwise provided by § 734.604(d)),

(2) *Interests in property.* For purposes of paragraph (d) of § 734.301, relating to interests in property, all the interests specified in that paragraph held during a period which begins on January 1 of the preceding calendar year and ends fewer than thirty-one

days before the date on which such report is filed, and

(3) *Liabilities.* For purposes of paragraph (e) of § 734.301, relating to liabilities, all the liabilities specified in that paragraph owed during a period which begins on January 1 of the preceding calendar year and ends fewer than thirty-one days before the date on which the report is filed.

(b) *Termination reports.* Each report filed under § 734.201(e) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, under the provisions of § 734.301; except that in any case in which information is required by that section to be reported for the preceding calendar year with respect to any item, transaction, or occurrence, all such information for a period which begins on January 1 of the current calendar year and ends on the date on which the report is filed, shall also be reported.

[45 FR 69777, Oct. 21, 1980, as amended at 49 FR 33116, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985]

§ 734.303 Special rules.

(a) *Valuation of interests in property.* This paragraph (a) sets forth detailed rules for determining the value of interests in property for purposes of § 734.301(d). A good faith estimate of value may be made in lieu of a determination under paragraph (a)(1) or (a)(2) of this section, in any case in which such a determination cannot be obtained without undue hardship or expense to the reporting individual.

(1) *Real property.* If the current value of an interest in real property or an interest in a real estate partnership is not ascertainable without an appraisal, a reporting individual may report:

(i) The date of purchase and the purchase price of the interest in the real property, or

(ii) The assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value.

(2) *Other property.* If the current value of any item, other than real property referred to in paragraph (a)(1) of this section, is not ascertainable without an appraisal, a reporting individual may report (as appropriate)—

(i) The book value of a corporation whose stock is not publicly traded,

(ii) The net worth of a business partnership other than a real estate partnership,

(iii) The equity value of an individually owned business,

(iv) With respect to entities not referred to in paragraph (a)(2)(i) through (iii) of this section, any recognized indication of value accompanied by a full and complete description of the method used in determining such value, or

(v) In lieu of any indication of value referred to in this paragraph (a)(2), the assessed value of any such item for tax purposes, adjusted in the manner prescribed in paragraph (a)(1)(ii) of this section.

In any case in which the assessed value for tax purposes of any item is reported under paragraph (a)(1)(ii) or (a)(2)(v) of this section, in lieu of a categorization of the fair market value of that item in accordance with § 734.304, a full and complete description of the method used in determining the assessed value shall be reported.

(b) *Spouses and dependent children.* Each report required by the provisions of this subpart shall include:

(1) *Income.* For purposes of § 734.301(a), relating to income:

(i) With respect to a spouse, only the source of items of outside earned income (as defined in § 734.501(b)) which exceed $1,000; and in the case of such items derived from a spouse's self-employment in a business or profession, only the nature of the business or profession need be reported, and

(ii) With respect to interests in property of a spouse or dependent child, only income derived from such interests which are reported or reportable pursuant to § 734.301(d).

Example (1): The spouse of a reporting individual is employed as a teller at Bank X and earns $15,000 per year. The reporting individual must disclose that the spouse is employed by Bank X; however, the individual need not report the $15,000 earnings.

Example (2): The spouse of a reporting individual is self-employed as a pediatrician. The reporting individual need only disclose that the spouse is a physician.

(2) *Purchases, sales and exchanges of certain property.* For purposes of § 734.301(b), on purchases, sales and exchanges, with respect to interests in property of a spouse or dependent child reported or reportable under § 734.301(d), any purchase, sale, or exchange specified in § 734.301(b) with respect to any such interest;

(3) *Gifts and reimbursements.* For purposes of § 734.301(c), on gifts and reimbursements, with respect to—

(i) A spouse, only gifts and reimbursements, or

(ii) A dependent child, only gifts,

specified in that section received by the spouse or dependent child (to any extent) by reason of such spouse's or dependent child's relationship to the reporting individual;

Example (1): A reporting official and her spouse were taken to dinner by an individual the official dealt with as a Federal employee. The value of the spouse's dinner must be reported as a gift.

Example (2): The employer of the spouse of a reporting individual takes the spouse and such individual to dinner. The employer does not do business with the reporting individual's agency. The reporting individual is invited because of the marriage relationship. The reporting individual need not report the spouse's dinner as a gift under § 734.301(c). Only the reporting individual's dinner is reportable, if the threshold limitations of that section are satisfied.

(4) *Interests in property and liabilities.* For purposes of § 734.301 (d) and (e), on interests in property and liabilities, respectively, all information on any such interests or liabilities specified in those paragraphs of a spouse or dependent child, other than with respect to items—

(i) Which the reporting individual certifies,

(A) Represent the spouse's or dependent child's sole financial interest or responsibility, and

(B) That the reporting individual has no specific knowledge of,

(ii) Which are not in any way, past or present, derived from or related to the income, assets or activities of the reporting individual, and

(iii) From which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Example (1): The spouse of a reporting individual has acquired some securities from money earned in a part-time job. The securities have been set aside to provide funds to contribute to the cost of a grandchild's education. The reporting individual is not familiar with the holdings. Therefore, because the grandchild's education is not a legal obligation of the reporting individual, the securities are not reportable under the rules of this paragraph (b)(4).

(c) *Trusts and estates.* Each report required by the provisions of this subpart shall include the information otherwise required by these provisions, about the holdings of and the income from any trust or other financial arrangement—

(1) From which income is received by, or

(2) With respect to which a beneficial interest in principal or income is held by,

the reporting individual, spouse, or any dependent child. Notwithstanding the preceding sentence, no information is required about a non-vested beneficial interest in the principal of an estate and, in the case of a trust referred to in § 734.402(a), only the information described in § 734.402(b) shall be reported. Since the proper application of the rules of section 202(f)(1) of the Act and paragraph (c)(2) of this section depends on all the facts and circumstances of the particular case, reporting individuals or their representatives should consult with Office of Government Ethics staff to determine the proper treatment of any non-vested beneficial interest in the principal of a trust or other financial arrangement.

(d) *Divorce and separation.* Notwithstanding any other provision of this subpart, a reporting individual shall not be required to report any information about:

(1) A spouse living separate and apart from the individual with the intention of terminating the marriage or providing for permanent separation,

(2) A former spouse or a spouse from whom the individual is permanently separated, or

(3) Any income or obligations of the individual arising from the dissolution of his or her marriage or the permanent separation from his or her spouse.

(e) *Political campaign funds.* Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this part.

(f) *Gifts received when not in Government employment.* In the case of a reporting individual to whom the provisions of § 734.201(a) or (e) apply, the report need not contain any information about gifts and reimbursements to which the provisions of § 734.301(c) would otherwise apply, which are received during a period in which the reporting individual was not an officer or employee of the Federal Government.

(g) *Special rule in the case of certain gifts*—(1) *In general.* In unusual cases, a gift as defined in § 734.105(f) need not be aggregated under § 734.301(c), if the Director, Office of Government Ethics, determines:

(i) That the basis of the relationship between the grantor and grantee and the motivation for the gift are purely personal, and

(ii) That no countervailing public purpose requires public disclosure of the nature, source, and value.

In the event of any such determination, the waiver request and the grant of waiver shall be subject to the public disclosure requirements of § 734.603.

(2) *Procedure.* An individual seeking an exemption under this section shall file a request with the Office of Government Ethics which sets forth:

(i) The identity and occupation of the donor;

(ii) A statement that the relationship between the donor and the reporting individual is purely personal in nature; and

(iii) A statement that neither the donor nor any person or organization for whom the donor actually works or serves as a representative conducts business with, or is subject to regulation by, or is directly affected by action taken by, the agency which employs the reporting individual.

In the event that the immediately preceding statement cannot be made without qualification, the reporting individual may indicate those qualifications along with a statement demonstrating that he or she plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative.

§ 734.304 Property categories.

(a) The valuation categories specified for property items are as follows:

(1) Not more than $5,000;

(2) Greater than $5,000 but not more than $15,000;

(3) Greater than $15,000 but not more than $50,000;

(4) Greater than $50,000 but not more than $100,000;

(5) Greater than $100,000 but not more than $250,000; and

(6) Greater than $250,000.

Subpart D—Trusts

§ 734.401 Qualified trusts; general considerations.

(a) *In general.* (1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind trust. However, there was general agreement that the use of blind trusts frequently could ameliorate potential conflict of interest situations. An underlying concept is that if a Government official does not know the identity of his or her financial interests, his or her official actions should not be subject to collateral attack by questions of conflict of interest or the appearance of such a conflict. In other words if the Government official does not know what he or she owns, it is impossible for him or her intentionally to take actions to benefit specifically his or her own personal interests. Therefore, the general public policy goal to be achieved through the use of blind trusts is an actual "blindness" or lack of knowledge by the Government official with respect to the holdings held in trust. In unusual cases, this goal may be deemed to have been achieved with respect to an official appointed to a position by the President, by and with the advice and consent of the Senate, where there is a general dispersion of securities held in trust among individual entities and economic sectors under circumstances in which it is unlikely that official actions taken by him or her will affect individual holdings to such a degree that the overall value of the entire portfolio will be materially enhanced. The result of wide diversification under the conditions prescribed is considered tantamount to actual blindness.

(2) Trusts certified under the provisions of this Subpart D are not subject to the general rules of Subpart C of this part, which normally require the public financial disclosure report of a reporting individual to indicate the contents of a trust's portfolio. Further, as described in paragraph (b)(3) of this section, in the case of trusts which are certified, the normal application of 18 U.S.C. 208 and other Federal conflict of interest laws is ameliorated by the Act in accordance with the concepts discussed in paragraph (a)(1) of this section.

(b) *Nature of qualified trusts.* The public policy concerns and objectives indicated in paragraph (a) of this section are fulfilled by the major requirements of this subpart as described in this paragraph (b). The Office of Government Ethics will apply the standards of this subpart to specific cases.

(1) *A truly independent trustee.* Under § 734.406, the individual or institution in charge of a qualified trust, and therefore of investing the assets of the trust, must be independent of the Government official in reality and appearance. The trustee must not be subject to control or influence in the administration of the trust by any interested party: the official, his or her spouse, or dependent children. Permissible trustees are limited to members of professional groups with standards of conduct governing their actions as fiduciaries (financial institutions, attorneys, accountants, investment advisers and brokers). The trustee cannot be a relative, employee, or business partner of the official, spouse, or dependent children.

(2) *A trust document meeting certain minimum standards.* Under § 734.404, regarding qualified diversified trusts, the trust document must, except for limited exceptions, expressly prohibit communications between the trustee and the Government official, and other interested parties, regarding the trust's holdings and activities. The trustee must be empowered to make investment decisions independent of any consultation with or control by the interested parties. Generally, communications about the trust between the interested parties and the trustee must be in writing. Copies of all written communications must be filed with the Office of Government Ethics. The trust document must also provide that the interested parties will not attempt to obtain information about the trust holdings and activities except as specifically provided therein.

(3) *Relationship to conflict of interest laws*—(i) *Qualified blind trusts.* In the case of a qualified blind trust (§ 734.403), an asset placed in trust by an interested party is considered a financial interest of the Government official for the purposes of 18 U.S.C. 208 and any other conflict of interest statutes or regulations of the Federal Government until the party is notified by the trustee that the asset has been disposed of, or has a value of less than $1,000. Thus, the trust is considered blind only as to assets subsequently purchased by the trustee. The interested parties will have no knowledge of the trustee's acquisitions, and thus the Government official and the other interested parties will be truly blind with respect to these holdings.

(ii) *Qualified diversified trusts.* In the case of a qualified diversified trust (§ 734.404), the trust's holdings are not deemed financial interests of the Government official for purposes of 18 U.S.C. 208 or any other Federal conflict of interest law. This type of trust may only be utilized by an official appointed by the President, by and with the advice and consent of the Senate. It must be established to the satisfaction of the Director, Office of Government Ethics, under § 734.404(b), that the assets of a diversified trust proposed for qualification consist of a well-diversified portfolio of readily marketable securities. None of the assets initially placed in the trust may consist of securities of issuers having substantial activities related to the reporting individual's primary area of responsibility.

(4) *Relationship to Subpart C reporting requirements.* Qualified trusts are not subject to the normally applicable reporting requirements of Subpart C of this part. The less inclusive rules of § 734.402(b) are applied with respect to qualified trusts pursuant to the Act.

(5) *Prior approval of trust document and assets placed in the trust.* Before a trust can be certified, every proposed trust document (see § 734.405) and proposed trustee (see § 734.406) must be approved by the Office of Government Ethics. This is essential so that the Office can ensure in advance that the proposed trust arrangement satisfies the letter and spirit of the established standards. Model qualified trust instruments are available from the Office to attorneys for their use in drafting trust agreements to be proposed for qualification.

(6) *Effective sanctions and enforcement.* Under the provisions of Subpart G of this part, civil and criminal sanctions are provided for any Government official or trustee who violates his or her obligation under a qualified trust. In addition, the Office of Government Ethics has authority under the Act to impose appropriate administrative or other sanctions.

(c) *Certification of pre-existing trusts.* Normally, trusts certified by the Director, Office of Government Ethics, under § 734.405 are newly created trust arrangements formulated by representatives of the interested parties in consultation with the staff of the Office to meet the established standards. However, in a case where the Director determines that such action is appropriate to assure compliance with applicable laws and regulations, an existing trust may be proposed for certification as a qualified blind trust or qualified diversified trust under the provisions of § 734.403 or § 734.404. In addition to the normally applicable rules of this Subpart D, there are other considerations that pertain in the case of pre-existing trusts. Interested parties and their representatives are invited to contact the Office of Government Ethics for further information.

[45 FR 69777, Oct. 21, 1980; 45 FR 83472, Dec. 19, 1980, as amended at 50 FR 1203, Jan. 10, 1985]

§ 734.402 Special rules in the case of certain trusts.

(a) *In general.* Notwithstanding the provisions of Subpart C of this part, a reporting individual need not, except as otherwise provided in this subpart, report the holdings of or the source of income from any of the holdings of:

(1) Any qualified blind trust, as defined in § 734.403,

(2) Any qualified diversified trust, as defined in § 734.404, or

(3) Any "excepted trust," one:

(i) Which was not created directly by the individual, his or her spouse, or any dependent child, and

(ii) The holdings or sources of income of which the individual, his or her spouse, and any dependent child have no knowledge.

(b) *Subpart C reporting requirements*—(1) *Income.* In the case of a trust referred to in paragraph (a) of this section except for a qualified diversified trust, a reporting individual shall report the category of the aggregate amount of the trust's income attributable to the beneficial interest in the trust of the individual, his or her spouse, or any dependent child under the rules of Subpart C of this part. In the case of a qualified diversified trust, only amounts actually received in respect of such a trust by the individual, his or her spouse, or any dependent child, or applied for the benefit of any such interested party, shall be deemed income derived from the trust for purposes of this part.

(2) *Holdings and sources of income.* In the case of a trust referred to in:

(i) Paragraph (a)(1) or (a)(2) of this section, no report under Subpart C of this part on holdings and sources of income is required, or

(ii) Paragraph (a)(3) of this section, holdings and sources of income shall be reported under the rules of Subpart C of this part only to the extent that the reporting individual has reasonably specific knowledge of the holdings and sources of income.

Example (1): A reporting individual, *R*, is the beneficiary of a family trust created by his grandfather. *R*—(i) has never seen the trust instrument, (ii) receives a monthly payment of $500 from the trustee, and (iii) has been told by his grandfather that the trust assets include large holdings of Canadian mining stock. *R* does not have any further specific knowledge about the trust and its holdings, and the grandfather and trustee have declined to provide further information. This trust would be considered by the Office of Government Ethics to be an excepted trust described in paragraph (a)(3) of this section. *R* is obligated to report $6,000 as income from the trust in his annual financial disclosure report filed under Subpart C, and under § 734.301(d) he would report that he is a beneficiary of an excepted trust which he believes to have Canadian mining stock among its holdings.

Example (2): During 1979, the trustee of reporting individual *M's* qualified diversified trust makes payments as follows:

(i) A monthly distribution of $1,000 to *M* as specified in the trust instrument,

(ii) $4,000 to *M's* wife for medical expenses pursuant to the trustee's discretion under the terms of the trust instrument, and

(iii) $2,500 to *M's* son for educational expenses pursuant to the trust instrument.

For 1979, $18,500 is deemed to be the income derived from the trust and should be reported under Subpart C of this part; notwithstanding, that the actual income attributable to the interests of *M*, his spouse, and dependent children in the qualified diversified trust might be a greater amount. The actual amount must be kept confidential by the trustee and, under § 734.404, not revealed to the interested parties.

Example (3): Note that $18,500 would be the income deemed to have been derived from the qualified diversified trust in *Example (2)*, even if the actual income attributable to the interests of the interested parties was less than $18,500 or even if the trust had a net loss for the year.

§ 734.403 Qualified blind trusts.

(a) *Definition.* For purposes of § 734.402, the term "qualified blind trust" means a trust certified by the Director, Office of Government Ethics, under § 734.405 which includes the provisions described in paragraph (b) of this section and has an independent trustee (as defined in § 734.406). See section 202(f)(3) of the Act.

(b) *Required provisions.* The trust instrument which establishes a trust to which this section applies must provide that—

(1) The trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(2) The trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(3) The trustee shall notify promptly the reporting individual and the Director, Office of Government Ethics, when any particular asset transferred to the trust by any interested party has been completely disposed of or when the value of that asset becomes less than $1,000;

(4) The trust tax return shall be prepared by the trustee or his or her designee, and the return and any information relating thereto, other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return, shall not be disclosed publicly or to any interested party;

(5) An interested party shall not receive any report on the holdings and sources of income of the trust, except that the trustee shall—

(i) Make quarterly reports of the aggregate market value of the assets representing the interested party's interest in the trust,

(ii) Report the net income or loss of the trust and make any other reports necessary to enable the interested party to complete an individual tax return required by law, and

(iii) Provide the information described in § 734.402(b) (relating to reporting of income);

(6) Except for communications which consist solely of requests for distributions from the trust, which shall not specify whether any such distribution shall be made in cash or in kind, there shall be no direct or indirect communication between the trustee and an interested party about the trust unless the communication is in writing and unless it relates only:

(i) To the general financial interest and needs of the interested party including, but not limited to, an interest in maximizing income or long-term capital gain,

(ii) To the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an aset, which notification directs that the asset not be held by the trust, or

(iii) To directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual but nothing in the trust instrument shall require any such direction;

(7) The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information about the holdings of, and the sources of income of, the trust, including obtaining a copy of any trust tax return filed by the trustee or any information relating thereto, except for the reports and information specified in paragraph (b)(5) of this section; and

(8) The trustee and any other person designated in the trust instrument as an investment adviser shall fulfill the filing requirements of § 734.407(b) and (c).

Example (1)

(A) Professionals employed by the trustee to prepare the trust tax return should be cautioned against sending informational copies to any interested party, and

(B) An interested party who inadvertently receives in the mail a broker's confirmation of a transaction for the trust should send the confirmation to the trustee with an accompanying letter instructing the trustee to take steps to assure that the party will not receive such confirmations in the future (a copy of such a letter must be sent to the Office of Government Ethics pursuant to § 734.407(c)).

Paragraph (b)(7) of this section prohibits any activity by interested parties to obtain, directly or indirectly, any information which under the rules of this section is precluded from interested parties. The paragraph also specifically prohibits the passive receipt of precluded information by interested parties. Accordingly, interested parties and trustees, their staffs, and professionals who may be employed by them are required to exercise a high degree of diligence to safeguard against inadvertent disclosure of precluded information to the interested parties.

[45 FR 69777, Oct. 21, 1980, as amended at 49 FR 33116, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985]

§ 734.404 Qualified diversified trusts.

(a) *Definition.* For purposes of § 734.402, the term "qualified diversified trust" means a trust certified by the Director, Office of Government Ethics, under § 734.405 which has a portfolio as specified in paragraph (b) of this section, includes the provisions described in paragraph (c) of this section, and has an independent trustee (as defined in § 734.406). This certification may be granted only in the case of individuals described in paragraph (e) of this section. See section 202(f)(4)(B) of the Act.

(b) *Required portfolio*—(1) *In general.* It must be established to the satisfaction of the Director, Office of Government Ethics, that the assets of the trust proposed for qualification consist of a well-diversified portfolio of readily marketable securities. Accordingly, the reporting individual, or a representative of the individual, shall provide the Director with a detailed listing of the securities proposed for inclusion in the portfolio, specifying their market values and demonstrating that the requirements of this paragraph (b) have been met. None of the assets initially placed in the trust may consist of securities of issuers having substantial activities related to the reporting individual's primary area of responsibility. No limitations are established under this paragraph with respect to—

(i) Cash, or

(ii) Debt instruments issued by the United States or its non-corporate instrumentalities.

(2) *Well-diversified*—(i) *Portfolios which exceed $250,000.* In the case of a trust which has assets with a total market value which exceeds $250,000, the portfolio will be deemed well-diversified, for purposes of this section, unless the trust holds—

(A) Securities of any issuer which have a market value which exceeds twenty percent of the total market value of the portfolio, or

(B) Securities substantially related to any industry or economic sector which have a market value which exceeds thirty percent of the total market value of the portfolio.

Notwithstanding the preceding sentence, the Office of Government Ethics may authorize limited deviations from the standards of this paragraph (b)(2)(i) with respect to the holdings initially transferred to the trust in cases where, under all the facts and circumstances, the Office determines that overall portfolio balance has been achieved.

Example (1): In unusual circumstances involving a divorce settlement, the proposed initial portfolio of a trust with a total market value of $350,000 is determined by the Office of Government Ethics to have overall balance and is deemed well-diversified even though securities of three utilities represent 32 percent of the portfolio's total market value and the securities of one bank represent 23 percent. However, the trustee may not purchase additional utility or bank securities while the percentages of portfolio market value they represent continue to exceed the standards of paragraph (b)(2)(i) of this section.

(ii) *Portfolios which do not exceed $250,000.* The Office of Government Ethics recognizes that it is impractical in the case of smaller trusts to expect the same quantitative diversification with respect to initial holdings that is required in the case of larger trusts. Consequently, in the case of a trust which has assets with a total market value which does not exceed $250,000, the Office may authorize a lesser degree of diversification than the standards of paragraph (b)(2)(i) of this section with respect to the holdings initially transferred to the trust in cases where, under all the facts and circumstances, the Office determines that overall portfolio balance has been achieved.

Example (1): A proposed initial portfolio with a total market value of $100,000 contains four listed securities, each representing a different industry or economic sector. Two of the securities each have a market value of $24,000, and the other two securities each have a market valueof $26,000. The portfolio will be deemed to be well-diversified.

(iii) *Consultation.* Interested parties and their representatives are invited to consult with the Office of Government Ethics on the question of whether overall portfolio balance has been achieved in particular cases.

(3) *Readily marketable.* A security will be deemed readily marketable, for purposes of this section, if:

(i) Daily price quotations for the security appear regularly in newspapers of general circulation, such as the Wall Street Journal, New York Times, and Washington Post, and

(ii) The trust holds the security in a quantity which does not unduly impair liquidity.

(c) *Required provisions.* The trust instrument which establishes a trust to which this section applies must provide that:

(1) The trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(2) The trustee shall not acquire any securities in excess of the diversification standards of paragraph (b)(2)(i) of this section;

(3) The trustee shall not disclose publicly or to any interested party information as to the acquisition, retention, or disposition of any particular securities;

(4) The trust tax return shall be prepared by the trustee or his delegate, and such return and any information relating thereto shall not be disclosed to the public or to any interested party;

(5) An interested party shall not receive any report on the holdings and sources of income of the trust; except that the trustee shall:

(i) Make quarterly reports of the aggregate market value of the assets representing such interested party's interest in the trust, and

(ii) Provide the information described in § 734.402(b) (relating to reporting of income);

(6) Except for communications which consist solely of requests for distributions from the trust, which shall not specify whether any such distribution shall be made in cash or in kind, there shall be no direct or indirect communication between the trustee and an interested party about

the trust unless the communication is in writing and unless it relates only—

(i) To the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), or

(ii) To information, documents, and funds provided by, or needed from, the interested party to effectuate the provisions of paragraph (d) of this section;

(7) The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information about the holdings of, and the sources and amounts of income of the trust including obtaining a copy of any trust or personal tax return filed by the trustee or any information relating thereto, except for the reports and information specified in paragraph (c)(5) of this section; and

(8) The trustee and any other person designated in the trust instrument as an investment adviser shall fulfill the filing requirements of § 734.407(b) and (c).

With respect to paragraph (c)(7) of this section, see *Example (1)* following § 734.403(b).

(d) *Personal income tax returns.* In the case of a trust to which this section applies, the trustee shall be given power of attorney to prepare, and shall file, on behalf of any interested party, the personal income tax returns and similar returns which may contain information about the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose. Communications regarding decisions such as whether to file joint or separate returns, the portions of a tax obligation to be borne by each spouse, the amounts and timing of tax payments, and the sources of funds therefor, shall be subject to paragraph (c)(6)(ii) of this section.

(e) *Applicability.* The provisions of this section shall be applicable only in the case of a trust created for the benefit of a reporting individual appointed to his or her office by the President, by and with the consent of the Senate, or the spouse or dependent child of such a person. In the case of a reporting individual whose nomination is before a Senate committee, the individual must inform the Committee of his or her intention to establish a qualified diversified trust at the time his or her financial disclosure report is filed with the Committee. This notification is not required of a reporting individual who is already in office. This section is not applicable in the case of members of the uniformed services or foreign service officers in the State Department.

[45 FR 69777, Oct. 21, 1980; 45 FR 83472, Dec. 19, 1980; 49 FR 33116, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985]

§ 734.405 Certification of trusts proposed for qualification; other matters.

(a) *General rule.* In any case in which an interested party desires to have a trust certified as a qualified blind trust or qualified diversified trust under the provisions of § 734.403 or § 734.404, respectively, the party or his or her representative should consult with the Director, Office of Government Ethics (or his or her delegate), as to the appropriateness of and requirements for certification in the particular case. In order to assure timely trust certification, the interested party shall be responsible for the expeditious submission to the Office of all required documents and responses to requests for information. A trust will be certified by:

(1) The Director in the case of a qualified blind trust, or

(2) The Director in concurrence with the Attorney General in the case of a qualified diversified trust,

only if it is established to the Director's satisfaction that the requirements of section 202 of the Act and this subpart have been met and that certification in the case is consistent with the policies established by those provisions and other applicable laws and regulations. Certification shall be indicated by a letter from the Director to the interested party or his or her representative. Certification of a trust may be revoked by the Director at any time, if in his or her sole discretion, he or she determines that continued certification is no longer justified. The terms of a qualified trust are normally irrevocable. The terms may not be amended, except with the prior written approval of the Director upon a showing of necessity and appropriateness.

(b) *Absence of control by interested party.* Except as expressly approved by the Director, Office of Government Ethics, in the case of a trust proposed for certification under the provisions of § 734.403, any asset transferred to a trust under this subpart shall be free of any restriction on its transfer or sale. Accordingly, in the case of interests in tax shelters, partnerships, and close corporations, the interested party shall demonstrate to the satisfaction of the Director that, under all the facts and circumstances, the interests are free of any restriction with respect to their transfer or sale.

(c) *Interested party, defined.* For purposes of this subpart, the term "interested party" means a reporting individual, the spouse, and any dependent child in a case in which the individual, spouse, or dependent child has a beneficial interest in the principal or income of a trust proposed for certification.

(d) *Restrictions applicable to trustees.* The trustee of a qualified blind trust or qualified diversified trust shall not knowingly or negligently:

(1) Disclose any information to an interested party with respect to the trust that may not be disclosed under any provision or requirement of this subpart,

(2) Acquire any holding:

(i) Directly from an interested party without the prior written approval of the Director, or

(ii) The ownership of which is prohibited by, or not in accordance with the terms of, the trust instrument,

(3) Solicit advice from any interested party with respect to such trust, which solicitation is prohibited by any provision or requirement of this subpart or the trust instrument, or

(4) Fail to file any document required by this subpart.

(e) *Restrictions applicable to reporting individuals.* In the case of a qualified blind trust or qualified diversified trust, a reporting individual shall not knowingly or negligently:

(1) Solicit or receive any information about the trust that may not be disclosed under any provision or requirement of this subpart, or

(2) Fail to file any document required by this subpart.

[45 FR 69777, Oct. 21, 1980; 45 FR 83472, Dec. 19, 1980]

§ 734.406 Independent trustee, defined.

(a) *General rule.* For purposes of this subpart, the term "independent trustee" shall include any person referred to in paragraph (b) of this section who, under all the facts and circumstances, is determined by the Director, Office of Government Ethics, in his or her sole discretion, to be independent of any interested party with respect to a trust proposed for qualification under this subpart. The Director shall indicate his or her approval of a proposed trustee, and of any person in addition to a party to the trust designated in the trust instrument as an investment adviser, by his or her signature on properly executed Certificates of Independence submitted to the Office of Government Ethics in the form prescribed by Appendix A of this part. Approval of a trustee may be revoked by the Director at any time, if, in his or her sole discretion, he or she determines that continued approval is no longer justified.

(b) *Eligible person.* A person, to be eligible to serve as a trustee under this section, must be:

(1) A financial institution, which is a "bank" as defined in 15 U.S.C. 80b-2(a)(2);

(2) An attorney, who is admitted to practice before the highest court of any jurisdiction;

(3) A certified public accountant;

(4) A "broker", as defined in 15 U.S.C. 78c(a)(4); or

(5) An "investment adviser", who is a person as defined in 15 U.S.C. 80b-2(a)(11) or who demonstrates to the satisfaction of the Director general involvement in his or her role as such an adviser in the management or control of trusts.

(c) *Requirements.* No eligible person shall be determined to be independent under this section unless that person, or any officer or employee thereof, involved or to be involved in the management or control of the trust:

(1) Is independent of and unassociated with any interested party so that that person cannot be controlled or influenced in the administration of the trust by any interested party,

(2) Is not or has not been an employee of an interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(3) Is not a relative of any interested party.

Accordingly, an otherwise eligible person who shares in a business enterprise or other undertaking with any interested party shall not be deemed to be independent under the rules of this paragraph (c).

Example (1). Reporting individual *R* terminates his partnership in a law firm upon nomination to a full-time government position. *R* wishes to have *T*, a partner in *R's* former firm, serve as his trustee. *T* may serve as *R's* trustee.

Example (2). In *Example (1), T* would have been precluded from serving as *R's* trustee if additionally:

(i) They both serve on the board of a local bank,

(ii) They are each limited partners in a tax shelter or operating business venture, or

(iii) Their spouses jointly operate a commercial venture.

Example (3). In Example (1), T would not have been precluded from serving as *R's* trustee if additionally:

(i) They both serve on a committee of their country club,

(ii) They each bought XYZ Corp. listed stock, after it was discussed by them during a golf weekend several months ago, or

(iii) *R* had purchased an office building from *T*.

§ 734.407 Special filing requirement in the case of qualified trusts.

(a) *Reporting individuals.* In the case of any qualified blind trust or qualified diversified trust, the reporting individual shall:

(1) *Execution.* Within thirty days after the trust is certified under § 734.405(a) by the Director, Office of Government Ethics, file with the Director a copy of:

(i) The executed trust instrument of the trust, and

(ii) A list of the assets which were transferred to the trust, categorized as to value in accordance with § 734.304.

The provisions of any trust filed with the Director under this paragraph which relate to the testamentary disposition of the trust assets need not be reported. If reported, the provisions shall not be subject to public disclosure.

(2) *Transfer of assets.* Within thirty days of transferring an asset, other than cash, to the trust, file a report with the Director, Office of Government Ethics, which shall briefly describe each asset, categorized as to value in accordance with § 734.304.

(3) *Dissolution.* Within thirty days of the dissolution of the trust—

(i) File a report of the dissolution with the Director, Office of Government Ethics, and

(ii) File with the Director, a list of assets of the trust at the time of the dissolution, categorized as to value in accordance with § 734.304.

Any document filed under the requirements of this paragraph shall be subject to the public disclosure requirements of § 734.602.

(b) *Trustees.* The trustee of a qualified blind trust or qualified diversified trust, and any person in addition to a party to the trust designated in the trust instrument as an investment adviser, shall file with the Director, Office of Government Ethics, by the May 15 following any calender year during which the trust was in existence a properly executed Certificate of Compliance in the form prescribed by Appendix B of this part. In addition, the trustee shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust. Any document (and the information contained therein) inspected under the requirements of this paragraph (other than a Certificate of Compliance) shall not be subject to the public disclosure requirements of § 734.602, and shall not be disclosed to any interested party.

(c) *Written communications.* In the case of any written communication with respect to a qualified blind trust or qualified diversified trust, which is described in § 734.403(b)(6) or § 734.404(c)(6), respectively, a copy of the communication shall, within five days of its date, be filed by the person initiating the communication with the Director, Office of Government Ethics. In the case of a qualified diversified trust, notwithstanding the preceding sentence, written communications not described in the third sentence of § 734.404(d) which consist entirely of reports from interested parties of their transactions and occurrences unrelated to the trust made to the trustee to effectuate the provisions of that section shall (in lieu of being filed with the Director) be retained by the trustee and are subject to inspection under paragraph (b) of this section.

§ 734.408 Effective date.

The provisions of this subpart shall be applicable to trusts certified as approved qualified blind trusts or qualified diversified trusts after October 26, 1978. In the case of a trust certified prior to November 1, 1980, notwithstanding the preceding sentence, the Director of the Office of Government Ethics may exempt the trust from specific provisions of this part if he or she determines, upon application of the trustee or any interested party, that exemption is necessary and appropriate to avoid impracticality or undue hardship.

Subpart E—Special Provisions

§ 734.501 Outside earned income.

(a) *Limitation.* All reporting individuals:

(1) Who occupy full-time positions in the Executive Branch, appointment to which is made by the President by and with the consent of the Senate, and who are compensated at a rate of pay specified for GS-16 or above of the General Schedule prescribed by 5 U.S.C. 5332, or

(2) Who are employees of the White House Office and are compensated at a rate equivalent to level II of the Executive Schedule under 5 U.S.C. 5313, may not have in any calendar year outside earned income attributable to that calendar year which is in excess of 15 percent of that compensation.

(b) *Defined.* For the purposes of this section, the term "outside earned income" means wages, salaries, commissions, professional fees and other compensation received for personal services actually rendered, other than for services for the United States Government described in paragraph (a) of this section. Income received

(1) By an inactive partner, or

(2) From investments with respect to which the personal services of the reporting individual are not a material factor,

shall not be deemed outside earned income for purposes of this section. The term does not include amounts received during a period in which the reporting individual was not employed as specified by paragraph (a) of this section for personal services actually rendered during the period.

(c) *Other employment limitations.* The provisions of this section shall not preclude the application of limitations on outside employment which may be imposed on employees of a particular agency.

[45 FR 69777, Oct. 21, 1980, as amended at 49 FR 33116, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985]

§ 734.502 Waivers.

(a) With respect to reporting requirements: Section 201(i) of the Act authorizes the Director to grant a waiver for officers and employees if they have served fewer than 130 days in a calendar year. For the rules relating to this waiver, see § 734.205.

(b) With respect to gifts: Section 202(a)(2)(D) of the Act authorizes the Director to grant a waiver in an unusual case with respect to the necessity for aggregating gifts. For the rules relating to this waiver, see § 734.303(g).

Subpart F—Procedure

§ 734.601 Report forms.

The Office of Government Ethics makes available standard forms for reporting the information required by this part.

§ 734.602 Filing of reports.

(a) Except as otherwise provided in this section, a reporting individual shall file the report required under this part with the designated agency ethics official at the agency in which the individual:

(1) Is serving,

(2) Served prior to termination of employment, or

(3) Will serve.

The designated agency ethics official shall note on any report or supplemental report the date it is received.

(b) The President and Vice President shall file their reports with the Director of the Office of Government Ethics.

(c) Each agency shall transmit to the Director, Office of Government Ethics, copies of the reports required to be filed by:

(1) The Postmaster General,

(2) The Deputy Postmaster General,

(3) The governors of the Board of Governors of the United States Postal Service,

(4) Designated agency ethics officials,

(5) Employees of the White House Office who are described in 3 U.S.C. 105(a)(2)(A) or (B); employees of the Office of Vice President who are described in 3 U.S.C. 106(a)(1) (A) or (B), and employees of the Domestic Policy Staff and Office of Administration (agencies in the Executive Office of the President) who are described in 3 U.S.C. 107(a)(1)(A) or (b)(1)(A)(i),

(6) Candidates for the office of President or Vice President, and

(7) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate other than those required of members of the unformed services.

Prior to transmitting a copy of the report to the Director, the agency shall, except in the case of the designated agency ethics official's report, which shall be reviewed by the head of the agency (or his or her delegate), review the report in accordance with § 734.604(b). The Director shall forward a copy of the report of each nominee to the Senate committee considering the nomination. (See § 734.604(c) for procedures regarding the review of such reports.)

(d) The Director shall file his or her report in the Office of Government Ethics. Upon receipt, the report will be made immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in § 734.201(d), other than an incumbent President or Vice President, shall file their reports with the Federal Election Commission which in turn shall send copies of such reports to the Office of Government Ethics pursuant to paragraph (c) of this section.

(f) Members of the uniformed services identified in § 734.202(c), shall file their reports with the Secretary concerned.

[45 FR 69777, Oct. 21, 1980, as amended at 49 FR 33117, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985]

§ 734.603 Custody of and public access to reports.

(a) Each agency shall make each report filed with it under this part available to the public in accordance with the provisions of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved, if available.

(b) This section does not require public availability of the report filed by any individual in:

(1) The Central Intelligence Agency,

(2) The Defense Intelligence Agency,

(3) The National Security Agency, or

(4) Any individual engaged in intelligence activities in any agency of the United States,

if the President finds that, due to the nature of the office or position occupied by the individual, public disclosure of the report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. These individuals may be authorized, notwithstanding § 734.701(a), to file any additional reports necessary to protect their identity from public disclosure if the President first finds that such filings are necessary in the national interest.

(c) Each agency shall, within fifteen days after any report is actually received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes a written application stating:

(1) The person's name, occupation and address,

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested, and

(3) That the person is aware of the prohibitions on the obtaining or use of the report, as set forth in paragraph (e) of this section.

The application shall be made available to the public throughout the period during which the report itself is made available to the public. The reviewing officials and the support staffs who maintain the files, the staff of the Office of Government Ethics, and Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations need not submit the application provided for by this paragraph.

(d) The agency may require a reasonable fee, established by appropriate agency regulation, to recover the direct cost of reproduction or mailing of such report, excluding any salary of any employee involved in such process. A copy of the report may be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fee is in the public interest. The criteria used by an agency to determine when a fee will be reduced or waived shall be established by an appropriate regulation.

(e) It is unlawful for any person to obtain or use a report—

(1) For any unlawful purpose;

(2) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(3) For determining or establishing the credit rating of any individual; or

(4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Example (1): The deputy general counsel of an agency as its reviewing official (see § 734.105(n)) is responsible for reviewing the public financial disclosures filed by officials within that agency. The personnel director for that agency, not exercising functions within the ethics program, wishes to review the disclosure of an individual within the agency. The personnel director must file an application to review the disclosure. However, the supervisor of an official with whom the deputy general counsel consults with respect to matters arising in the review process need not file such an application.

Example (2): A state law enforcement agent is conducting an investigation which involves the private financial dealings of an individual who has filed a public disclosure. The agent must complete a written application in order to review or obtain a copy of the statement.

Example (3): A copy of a report is obtained by a reporter for use in a general newspaper article. This copy is seen on the reporter's desk by an editor who is in charge of a local charity drive. The editor observes that the reporting individual owns a business in his community and sends a personal note to the individual referring to the business and soliciting a contribution for the charity. This use is prohibited.

Example (4): A financial institution has received an application for a loan from an official indicating her present financial status. The official has filed a public financial disclosure with her agency. The financial institution cannot review the disclosure for purposes of checking the information contained on the report against that which appears on the application.

(f)(1) Any report filed with an agency, or transmitted to the Director, Office of Government Ethics, under this section, shall be retained by the agency or the Office of Government Ethics, or both, as the case may be. The report shall be made available to the public for a period of six years after receipt of the report. After the six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report under § 734.201(c) and was not subsequently confirmed by the Senate, or who filed the report under § 734.201(d) and was not subsequently elected, the report shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President.

(2) For purposes of paragraph (f)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under Subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust shall be retained until the periods for retention of all other reports on the individual have lapsed under paragraph (f)(1) of this section.

§ 734.604 Review of reports.

(a) *In general.* Reports shall be reviewed by the appropriate reviewing official within 60 days after the date of filing. Reports reviewed by the Director, Office of Government Ethics, shall be reviewed within 60 days from the date each report was transmitted by the agency to OGE.

(b) *Responsibilites of reviewing officials*—(1) *Initial review.* The reviewing official shall review each report to determine to his or her satisfaction that:

(i) Each item is completed, and

(ii) No interest or position disclosed on the form violates or appears to violate:

(A) Any applicable provision of Chapter 11 of 18 U.S.C. Part 1,

(B) The Ethics in Government Act of 1978, as amended, and the regulations promulgated thereunder,

(C) Executive Order 11222 and applicable regulations promulgated thereunder, or

(D) Any other statute or regulation applicable to the employees of the reviewing official's agency.

The reviewing official shall not sign and date the report until that determination is made. A reviewing official need not audit the report to ascertain whether the disclosures are correct; disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. A report which is signed by a reviewing official, however, shall signify that the agency in which the reporting individual serves has found that the information contained in the report discloses no conflict of interest under applicable laws and regulations and that the report fulfills the requirements of this paragraph (b)(1).

(2) *Requests for additional information.* If the reviewing official believes that additional information is required, the official shall request this information indicating a date by which the information must be submitted. This additional information shall be made a part of the report.

(3) *Review on basis of additional information.* If the reviewing official concludes on the basis of the information disclosed in the report and any additional information required under paragraph (b)(2) of this section that:

(i) The report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report, or

(ii) The report does not fulfill the requirements of paragraph (b)(1) of this section, the official shall:

(A) Notify the reporting individual of this opinion,

(B) Afford the reporting individual a reasonable opportunity for an oral or written response, and

(C) Determine on the basis of the response whether or not the report fulfills the requirements.

(4) *Review to determine remedial action.* If the reviewing official concludes, after following the procedure set forth in paragraph (b)(3)(ii) of this section, that:

(i) The report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report and notify the reporting individual in writing that this action was taken; or

(ii) The report does not fulfill the requirements of paragraph (b)(1) of this section, the reviewing official shall:

(A) Notify the individual of that opinion,

(B) Afford the individual an opportunity for personal consultation, if practicable,

(C) Determine what remedial action should be taken to bring the report into compliance, and

(D) Notify the individual in writing of the remedial action required, indicating a date by which that action must be taken.

Except in unusual situations which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed within 90 days from the date the individual was notified that the action would be required.

(5) *Remedial steps.* Remedial steps may include, as appropriate:

(i) Divestiture of the conflicting interest,

(ii) Restitution,

(iii) The establishment of a qualified trust under section 202(f) of the Act,

(iv) Request for an exemption under 18 U.S.C. 208(b),

(v) Recusal, or

(vi) Voluntary request by the individual for transfer, reassignment, limitation of duties or resignation.

(6) *Compliance or referral.* (i) If the reporting individual complies with a written request for remedial action required under paragraph (b)(4)(ii), the reviewing official shall indicate in the comment section of the report that this action has been taken and shall sign and date the report. The reviewing official shall send to the reporting individual written notification of the signing and of the addition of the comment to the form.

(ii) If the reporting individual does not comply with a written request for remedial action transmitted under paragraph (b)(4)(ii) of this section, the reviewing official shall notify the Office of Government Ethics and refer the matter for appropriate action to:

(A) The President, where the reporting individual is in a position, other than in the uniformed services, appointment to which requires the advice and consent of the Senate,

(B) The Secretary concerned, for a member of the uniformed services, or

(C) The head of the agency, for any other officer or employee, except in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. In unusual circumstances, the Office of Government Ethics may order corrective action as authorized by section 402(b)(9) of the Act.

(7) *Appropriate action.* Appropriate action includes changes in assigned duties or adverse action in accordance with the procedures set forth in 5 CFR Part 752.

(8) *Scope of this paragraph.* The provisions of this paragraph (b) shall not apply in the case of the President or Vice President, or a candidate or nominee for such office.

(c) *Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate.* Notwithstanding paragraph (a) of this section, in the case of a report filed by an individual described in § 734.201(c) who is nominated to a position, by the President, by and with the advice and consent of the Senate:

(1) The Executive Office of the President shall furnish the financial disclosure reporting forms to the nominee and shall forward the completed report to the designated agency ethics official at the agency in which the nominee will serve or is serving; or when appropriate, the nominee shall file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official shall review the report and, only after the official completes a review in accordance with paragraph (b)(1) of this section and concludes that there is no conflict of interest under applicable laws and regulations, the official shall:

(i) Attach to the report a copy of the official position description (when available) of the position to be filled by the nominee;

(ii) Personally certify the report and date the certification;

(iii) Write an opinion letter to the Director, Office of Government Ethics, certifying that there is no conflict of interest under applicable laws and regulations, and discussing:

(A) Any problems which the official encountered in reaching the conclusions upon which that certification is based and describing the resolution of the problems, and

(B) Any specific commitment, agreement, recusal, or other undertaking by the nominee to resolve any such problem through recusal, divestiture or similar action (with a copy of any such commitment, agreement, recusal, or other undertaking which has been reduced to writing to be sent to the Director as soon as it is available); and

(iv) Deliver the letter and report to the Director, Office of Government Ethics, within three days after the receipt of the report by the agency in which the nominee will serve or is serving.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency official and, if satisfied that there is no unresolved conflict, the Director shall sign the report and date the approval. The Director shall submit the report with a letter to the Senate Committee involved expressing the Director's opinion that on the basis of information contained in the report the nominee is in compliance with applicable laws and regulations.

(4) If in the case of any nominee or class of nominees for any reason the expedited procedure specified in this paragraph (c) cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency official shall inform the Director. When necessary and appropriate in the case of a class of nominees, the Director may modify the rule of that paragraph with respect to a particular department or agency.

(d) *Updated disclosure of earned income and honoraria in the case of an individual nominated by the President to a position to which appointment is subject to confirmation by the Senate*—(1) *General Rule.* Each individual described in § 734.201(c) who is nominated by the President to a position to which appointment is subject to confirmation by the Senate shall, at or before the commencement of the first Senate Committee hearing to consider the nomination, submit to the Committee an amendment to his or her report previously filed under § 734.201(c) which shall update, through the period ending no earlier than five days prior to the date of the commencement of the hearing, the disclosure of items and other data with respect to (i) outside earned income, as defined in § 734.501(b), without application of its last sentence, and (ii) honoraria, as defined in § 734.105. Such individual shall transmit copies of the amendment to the designated agency ethics official referred to in paragraph (c)(1) of this section and to the Office of Government Ethics.

(2) *Additional certification.* In each case to which this paragraph applies, the Director of the Office of Government Ethics shall, at the request of the Committee considering the nomination, submit to it with respect to the updated disclosure an opinion letter of the nature described in paragraph (c)(3) of this section. In the event of such a request, the expedited procedure provided for by paragraph (c) shall apply to the updated disclosure which shall, for purposes of that paragraph, be deemed a report filed.

[45 FR 69777, Oct. 21, 1980; 45 FR 83473, Dec. 19, 1980, as amended at 49 FR 33117, Aug. 21, 1984; 50 FR 1204, Jan. 10, 1985]

§ 734.605 Advice and opinions.

For purposes of assisting both current and former employees in avoiding situations in which they would not be in compliance with applicable laws and regulations and to inform members of the public—

(a) The Director, Office of Government Ethics, will render advisory opinions on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments on the request for the advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public; and

(b) Each Secretary concerned and designated agency official, including the President in the case of individuals employed in the Executive Office of the President, shall maintain a list of those circumstances or situations which have resulted or may result in non-compliance with such laws or regulations; such list shall be periodically published, and shall be furnished to those individuals employed within the agency who are required to file reports under this part, however, the absence of any situation or circumstance from such a list shall not be construed as an indication that an individual in such circumstance or situation would be in compliance with such laws or regulations.

Subpart G—Penalties and Remedial Action

§ 734.701 Failure to file or falsifying reports.

(a) *Civil action.* The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information required under this part. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $5,000.

(b) *Referral of cases.* The head of each agency, each Secretary concerned, or the Director, Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual he or she has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file required information.

(c) *Administrative remedies.* The President, the Vice President, the Director, Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to file required information. This action includes adverse action under 5 CFR Part 752.

§ 734.702 Certain actions in the case of qualified trusts.

(a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of § 734.407(a) (1) and (2). The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $5,000.

(b) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of § 734.407(a)(1) and (a)(2). The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $1,000.

§ 734.703 Misuse of reports.

The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 205(c)(1) of the Act and § 734.603(e). The court in which the action is brought may assess against the person a penalty in any amount, not to exceed $5,000. This remedy shall be in addition to any other remedy available under statutory or common law.

Subpart H—Ethics Agreements

SOURCE: 50 FR 1204, Jan. 10, 1985, unless otherwise noted.

§ 734.801 Scope.

This subpart applies to ethics agreements made by reporting individuals (see § 734.202) to resolve potential or actual conflicts of interest.

§ 734.802 Requirements.

(a) *Ethics Agreement defined.* Except as provided in subsection (c) of this section, the term "ethics agreement" shall for the purposes of this subpart include any undertaking to carry out one or more of the following actions:

(1) Recusal or disqualification from one or more particular matters or categories of official action;

(2) Divestiture of a financial interest or interests;

(3) Resignation from a non-federal business or other entity;

(4) Participation in one or more particular matters or categories of official action upon the issuance of an 18 U.S.C. 208(b)(1) waiver; or

(5) Establishment of a blind trust under this Act.

(b) *Time limit.* The ethics agreement shall specify that the individual must complete the action which he or she has undertaken within a period not to exceed 3 months from the date of the agreement, except in cases of unusual hardship as determined by the Office of Government Ethics.

(c) *Exception.* An ethics agreement shall not include an undertaking by a reporting individual to carry out an action listed in subsection (a) of this section if the power to permit or deny the action by such individual has been granted by statute to an agency or official who has not approved the undertaking. See, for example, Department of Energy Organization Act, Pub. L. 95-91, Sections 602(a) and 606 (a) and (b).

Example 1. An official of the Boeing Company is nominated to a Department of Defense position requiring the advice and consent of the Senate. As a condition of assuming the position the individual has agreed to divest himself of his Boeing stock which he recently acquired while he was an officer with the company. However, a Securities and Exchange Commission law and regulation preclude officers of public corporations from deriving a profit from the sale of stock in the corporation in which they hold office within 6 months of acquiring the stock, and direct that any such profit must be returned to the issuing corporation or its stockholders. Since meeting the usual 3-month time limit specified in this subpart might entail losing any profit that might be realized on the sale of the stock, the Boeing official requests that such limit be extended beyond the end of the 6-month period imposed by the Commission to enable any profits from the transaction to inure to his benefit. Written approval would have to be obtained from the Office of Government Ethics to extend the customary 3-month period.

§ 734.803 Notification of ethics agreements.

(a) *Nominees to positions requiring the advice and consent of the Senate.* (1) In the case of a nominee referred to in §734.201(c), the designated agency ethics official shall include with the report submitted to the Office of Government Ethics any ethics agreement which the nominee has made.

(2) A designated agency ethics official shall immediately notify the Office of Government Ethics of an ethics agreement of a nominee which is made or becomes known after the submission of the nominee's report to the Office of Government Ethics. This requirement includes an ethics agreement made by a nominee with the Senate confirmation committee. The nominee for his or her part shall immediately report to the designated agency official an ethics agreement he or she has made with the committee.

(3) With regard to any ethics agreements made between the nominee and the Office of Government Ethics, the Office of Government Ethics shall immediately apprise the designated agency ethics official and the Senate confirmation committee.

(b) *Incumbents of positions requiring the advice and consent of the Senate.* In the case of a position requiring the incumbent's confirmation by the Senate, the designated agency ethics official shall immediately apprise the Office of Government Ethics of any ethics agreement which the incumbent has made.

(c) *Designated agency ethics officials not covered by paragraph (a) or (b) and employees of the White House Office and other agencies referred to in § 734.602(c)(5).* A designated agency ethics official not covered by paragraph (a) or (b) of this section and each employee of the White House Office, the Office of Vice President, or the Domestic Policy Staff and Office of Administration (agencies in the Executive Office of the President) who is referred to in § 734.602(c)(5) shall include with his or her initial report submitted to the Office of Government Ethics any ethics agreement which such official or employee has undertaken and shall immediately apprise the Office of Government Ethics of any subsequent ethics agreement.

(d) *Other reporting individuals.* Other reporting individuals desiring to enter into ethics agreements may do so with the designated agency ethics official. Where an ethics agreement has been made with someone other than the designated agency ethics official, the officer or employee involved shall immediately apprise the designated agency ethics official of the agreement.

§ 734.804 Notification of compliance.

Requisite evidence of action taken. In the case of nominees to positions requiring the advice and consent of the Senate, evidence of the action taken by the nominee to carry out an ethics agreement shall be submitted to the Office of Government Ethics and the Senate confirmation committee by the designated agency ethics official promptly upon receipt by the official of such evidence. In the case of incumbents of positions requiring the advice and consent of the Senate, evidence of action taken shall be submitted immediately by the designated agency ethics official to the Office of Government Ethics. Where a designated agency ethics official is neither a nominee nor an incumbent, such official must send evidence of his or her action to the Office of Government Ethics. In the case of other reporting individuals, evidence of action taken must be sent to the designated agency ethics official. The evidence of the action taken consists of any of the following:

(a) *Recusal.* A copy of the recusal agreement containing the specific matters to which the recusal shall apply, a statement of the process or method by which the recusal shall be enforced within the agency, and positions of those involved in its execution (i.e., the individual's immediate subordinates and supervisors).

Example (1): A member of the staff of the National Transportation Safety Board owns stock in UAL, Inc. (United Air Lines) and has agreed to recuse herself from participation in any investigations of accidents involving United Air Lines aircraft. A copy of this recusal would have to be given to her immediate subordinates and supervisors and to the designated agency ethics official. The staff member has also agreed to recuse herself from any particular matter (as defined in 18 U.S.C. 208) that might arise with respect to any of her present or future holdings. There would be no requirement to commit this type of general recusal to writing.

(b) *Divestiture, resignation, and reassignment.* Written notification that the divestiture, resignation, or reassignment has occurred.

(c) *18 U.S.C. 208(b)(1) waiver.* A copy of the waiver, signed by the appropriate supervisory official.

(d) *Blind trust.* Information required by Subpart D of this part submitted to the Office of Government Ethics for its approval of the blind trust instrument. Should the trust not be approved, the designated agency ethics official and, as appropriate, the Senate confirmation committee should be informed immediately.

§ 734.805 Retention.

Records of ethics agreements and actions described in this subpart shall be maintained with the individual's financial disclosure report at the agency and, where applicable, at the Office of Government Ethics.

APPENDIX A TO PART 734—CERTIFICATE OF INDEPENDENCE

The Certificate of Independence required by § 734.406(a) shall be executed as follows:

CERTIFICATE OF INDEPENDENCE

With respect to the trust of ———— (Settlor), which has been submitted to the Office of Government Ethics for certification pursuant to the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended), the undersigned proposed Trustee of such trust, or person in addition to a party to the trust designated in the trust instrument as an investment adviser, is eligible to serve in such fiduciary capacity in accordance with section 202(f)(3)(A) of such Act:

FIRST: The undersigned is (check one)—

☐ a financial institution, which is a "bank" as defined in 15 U.S.C. 80b-2(a)(2);
☐ an attorney, who is admitted to practice before the highest court of ————;
☐ a certified public accountant;
☐ a "broker", as defined in 15 U.S.C. 78c(a)(4);
☐ an investment adviser, who is a person defined in 15 U.S.C. 806-2(a)(11) or who demonstrates to the satisfaction of the Director general involvement in his or her role as such an adviser in the management or control of trusts; or
☐ a person in addition to a party to the trust designated in the trust instrument as an investment adviser.

SECOND: The undersigned (and any officer or employee of the undersigned, involved or to be involved in the management or control of the trust)—

(A) Is independent of and unassociated with any interested party so that the undersigned (and any such officer and employee) cannot be controlled or influenced in the administration of the trust by any interested party;

(B) Is not or has not been an employee of an interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party;

(C) Is not a relative of any interested party; and

(D) Does not share actively in a business enterprise or other undertaking with any interested party.

* * * * *

The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date ————————————
(firm) ————————————
By: ————————————
(title) ————————————
Approved by ————————————

Director, Office of Government Ethics

Date ————————————

APPENDIX B TO PART 734—CERTIFICATE OF COMPLIANCE

The Certificate of Compliance required by § 734.407(b) shall be executed as follows:

CERTIFICATE OF COMPLIANCE

With respect to the qualified blind trust [qualified diversified trust] of ———— (Settlor), the undersigned, the approved Trustee of such trust or approved person in addition to a party to the trust designated in the trust instrument as an investment adviser pursuant to 5 CFR 734.406, has served in such fiduciary capacity during the calendar year ———— (or for the period beginning ———— and ending ————) and is eligible to continue in such capacity by virtue of the following:

The undersigned (and any officer or employee involved in the management or control of the trust) has not knowingly or negligently, and will not—

(A) disclose any information to an interested party with respect to such trust that may not be disclosed pursuant to 5 CFR 734.403(b)(5) (5 CFR 734.404(c)(5), in the case of a qualified diversified trust) or any other provision or requirement of Subpart D of 5 CFR Part 734,

(B) acquire any holding the ownership of which is prohibited by, or not in accordance with, 5 CFR 734.403(b)(2) (5 CFR 734.404(c)(2), in the case of a qualified diversified trust) or the terms of the trust instrument,

(C) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by 5 CFR 734.403(b)(1) (5 CFR 734.404(c)(1), in the case of a qualified diversified trust) or any other provision or requirement of Subpart D of 5 CFR Part 734 or the trust instrument,

(D) fail to file any document required by 5 CFR 734.407(b) and (c) or any other provision of Subpart D of 5 CFR Part 734, or

(E) violate or fail to comply with any provision or requirement of Subpart D of 5 CFR Part 734 or the trust instrument.

* * * * *

The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date ————————————
(firm) ————————————
By: ————————————
(title) ————————————

PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

NOTE: Part 1001 added to this chapter at 31 FR 873, January 22, 1966 and revised at 32 FR 11113, Aug. 1, 1967 and 36 FR 6874, Apr. 9, 1971, supplements this Part 735.

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AUTHORITY: Titles II and IV of Pub. L. 95-521 (October 26, 1978), as amended by Pub. L. 96-19 (June 13, 1979); U.S.C. Appendix 1005; Pub. L. 98-150 (November 11, 1983); secs. 602, 701, 702; E.O. 11222, 3 CFR, 3 CFR, 1964-1965 Comp., p. 306, unless otherwise noted, 18 U.S.C. 201 note.

SOURCE: 33 FR 12487, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 735.101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth OPM regulations under which each agency head shall issue regulations covering the agency's employees and special Government employees, prescribing standards of conduct and responsibilities, and governing statements reporting employment and financial interests.

§ 735.102 Definitions.

In this part:

(a) "Agency" means an Executive agency (other than the General Accounting Office) as defined by section 105 of title 5, United States Code, the Postal Service, and the Postal Rate Commission.

(b) "Employee" means an employee of an agency, but does not include a special Government employee or a member of the uniformed services.

(c) "Executive order" means Executive Order 11222 of May 8, 1965.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(e) "Special Government employee" means a "special Government employee" as defined in section 202 of title 18, United States Code, who is employed in the executive branch, but does not include a member of the uniformed services.

(f) "Uniformed services" has the meaning given that term by section 2101 of title 5, United States Code.

[33 FR 12487, Sept. 4, 1968, as amended at 36 FR 11999, June 24, 1971]

§ 735.103 Applicability to members of the uniformed services.

This part, except this section, is not applicable to members of the uniformed services. Each agency having jurisdiction over members of the uniformed services shall issue regulations covering those members and regulating their ethical and other conduct and the reporting of employment and financial interests in a manner consistent with the Executive order and this part.

§ 735.104 Issuance, approval, and publication of agency regulations.

(a) Except as provided in paragraph (f) of this section, each agency head shall prepare, and submit to OPM for approval, regulations in accordance with this part that:

(1) Implement the requirements of law, the Executive order, and this part; and

(2) Prescribe additional standards of ethical and other conduct and reporting requirements that are appropriate to the particular functions and activities of the agency and are not inconsistent with law, the Executive order, and this part.

(b) After OPM approval each agency head shall:

(1) Submit the agency's regulations to the FEDERAL REGISTER for publication;

(2) Furnish each employee and special Government employee a copy of the appropriate agency regulations (or a comprehensive summary thereof) within 90 days after approval;

(3) Furnish each new employee and special Government employee a copy of the appropriate agency regulations (or a comprehensive summary thereof) at the time of his entrance on duty;

(4) Bring the appropriate agency regulations to the attention of each employee and special Government employee annually, and at such other times as circumstances warrant;

(5) Assure the availability of counseling to each employee and special Government employee as provided in § 735.105; and

(6) Have available for review by employees and special Government employees, as appropriate, copies of laws, the Executive order, agency regulations, and pertinent OPM regulations and instructions relating to ethical and other conduct.

(c) Agency regulations issued under this part are effective only after approval by OPM and publication in the FEDERAL REGISTER.

(d) Requests for approval of agency regulations to be issued under this part shall be directed both to the Office of Personnel Management, Office of the General Counsel, Washington, D.C. 20415, and the Office of Government Ethics, OPM, Washington, D.C. 20415.

(e) This section applies to any amendment of agency regulations issued under this part.

(f) An agency head who does not consider it feasible to prepare agency regulations under this part because of the small number of his employees, or for another reason acceptable to OPM, may adopt the regulations in this part for application, as appropriate, to the employees and special Government employees of his agency if:

(1) He obtains the approval of OPM for that adoption; and

(2) After obtaining that approval, he submits a notice to the FEDERAL REGISTER announcing the applicability of this part to his employees.

[33 FR 12487, Sept. 4, 1968, as amended at 50 FR 1205, Jan. 10, 1985]

§ 735.105 Interpretation and advisory service.

(a) Each agency head shall designate a top-ranking employee of his agency who has appropriate experience, preferably legal, and in whom he has complete personal confidence, to be the counselor for the agency and to serve as the agency's designee to OPM on matters covered by this part. The counselor shall be made responsible for coordination of the agency's counseling services provided under paragraph (b) of this section and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available to deputy counselors designated under paragraph (b) of this section.

(b) Each agency head shall designate deputy counselors for the agency's employees and special Government employees. Deputy counselors designated under this section shall be qualified and in a position to give authoritative advice and guidance to each employee and special Government employee who seeks advice and guidance on questions of conflicts of interest and on other matters covered by this part.

(c) Each agency shall notify its employees and special Government employees of the availability of counseling services and of how and where these services are available. This notification shall be made within 90 days after approval of the agency regulations to be issued under this part, and periodically thereafter. In the case of a new employee or special Government employee appointed after this notification, notification shall be made at the time of his entrance on duty.

§ 735.106 Reviewing statements and reporting conflicts of interest.

(a) Agency regulations issued under this part shall establish a system for the review of statements of employment and financial interests submitted under Subpart D of this part. The system of review shall be designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees and special Government employees.

(b) The system of review established under paragraph (a) of this section shall provide that, when a statement submitted under Subpart D of this part or information from other sources indicates a conflict between the interests of an employee or special Government employee and the performance of his services for the Government and when the conflict or appearance of conflict is not resolved at a lower level in the agency, the information concerning the conflict or appearance of conflict shall be reported to the agency head through the counselor for the agency.

(c) The employee or special Government employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict.

§ 735.107 Disciplinary and other remedial action.

(a) Agency regulations issued under this part shall provide that a violation of the agency regulations by an employee or special Government employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) When, after consideration of the explanation of the employee or special Government employee provided by § 735.106, the agency head decides that remedial action is required, he shall take immediate action to end the conflicts or appearance of conflicts of interest. Remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his conflicting interest;

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

Subpart B—Agency Regulations Governing Ethical and Other Conduct and Responsibilities of Employees

§ 735.201 Specific provisions of agency regulations.

Agency regulations issued under this subpart, as a minimum, shall contain provisions covering the standards of and governing the ethical and other conduct of its employees set forth in §§ 735.202 through 735.210.

§ 735.201a Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 735.202 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (f) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with his agency;

(2) Conducts operations or activities that are regulated by his agency; or

(3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

(b) Agency regulations implementing paragraph (a) of this section may provide for such exceptions as may be necessary and appropriate in view of the nature of the agency's work and the duties and responsibilities of the employees. Appropriate exceptions which may be made by an agency include, but are not limited to, those that:

(1) Govern obvious family or personal relationships (such as those between the parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Permit acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Permit acceptance of loans from banks or other financial institutions on customary terms of finance proper and usual activities of employees, such as home mortgage loans; and

(4) Permit acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(c) [Reserved]

(d) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(e) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in section 7342 of title 5, United States Code.

(f) Neither this section nor § 735.203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967 (46 Comp. Gen. 689).

§ 735.203 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair his mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, this part, or the agency regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of OPM or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) [Reserved]

(e) This section does not preclude an employee from:

(1) [Reserved]

(2) Participation in the activities of national or State political parties not proscribed by law.

(3) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(4) Outside employment permitted under the regulations of his agency issued under this part.

§ 735.204 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive order, this section, or the agency regulations.

§ 735.205 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

§ 735.206 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 735.203(c), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 735.207 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as Federal, State or local taxes, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt.

[40 FR 7435, Feb. 20, 1975]

§ 735.208 Gambling, betting, and lotteries.

An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar agency-approved activities.

§ 735.209 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 735.210 Miscellaneous statutory provisions.

Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of his agency and of the Government. An agency shall direct the attention of its employees, by specific reference in the agency regulations issued under this part, to each statute relating to the ethical and other conduct of employees of that agency and to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72A Stat. B12, the "Code of Ethics for Government Service".

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart C—Agency Regulations Governing Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 735.301 Specific provisions of agency regulations.

Agency regulations issued under this subpart, as a minimum, shall contain provisions covering the standards of and governing the ethical and other conduct of its special Government employees as set forth in §§ 735.302 through 735.306. In addition, to the extent considered appropriate by the agency head, the agency regulations issued under this subpart shall require its special Government employees to adhere to the standards of conduct made applicable to employees by the agency regulations issued under Subpart B of this part.

§ 735.302 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 735.303 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) Agency regulations implementing paragraph (a) of this section may provide that special Government employees may teach, lecture, or write in a manner not inconsistent with § 735.203(c) in regard to employees.

§ 735.304 Coercion.

A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 735.305 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with his agency anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) Agency regulations implementing paragraph (a) of this section may provide for exceptions for special Government employees that are not inconsistent with the exceptions authorized for their employees under § 735.202(b).

§ 735.306 Miscellaneous statutory provisions.

Each special Government employee shall acquaint himself with each statute that relates to his ethical and other conduct as a special Government employee of his agency and of the Government. An agency shall direct the attention of its special Government employees, by specific reference in the agency regulations issued under this part, to each statute relating to the ethical and other conduct of special Government employees of that agency and to those statutory provisions listed in § 735.210 that are applicable to special Government employees.

Subpart D—Agency Regulations Governing Statements of Employment and Financial Interests

§ 735.401 Form and content of statements.

The statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, as a minimum, the information required by the formats prescribed by OPM in the Federal Personnel Manual. An agency shall not include questions on a statement of employment and financial interests that go beyond, or are in greater detail than, those included on OPM's formats without the approval of OPM.

§ 735.402 Specific provisions of agency regulations for employees.

Agency regulations issued under this subpart for employees, as a minimum, shall contain provisions covering the reporting requirements set forth in §§ 735.403 through 735.411.

§ 735.403 Employees required to submit statements.

Except as provided in § 735.404, each agency head shall require statements of employment and financial interests from:

(a) Employees paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

(b) Employees classified at GS-13 or above under section 5332 of title 5, United States Code, or at a comparable pay level under another authority, who are in positions identified in the agency's regulations as positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise; or

(4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(c) Employees classified at GS-13 or above under section 5332 of title 5, United States Code, or at a comparable pay level under another authority, who are in positions which the agency has determined have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of law, Executive order, this part, and the agency's regulations.

(d) Employees classified below GS-13 under section 5332 of title 5, United States Code, or at a comparable pay level under another authority, who are in positions which otherwise meet the criteria in paragraph (b) or (c) of this section, when the inclusion of the positions in the agency's regulations has been specifically justified by the agency in writing to OPM as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflicts-of-interest situation.

§ 735.403a Employee's complaint on filing requirement.

Agency regulations issued under this subpart shall inform employees of the opportunity for review through the agency's grievance procedure of a complaint by an employee that his position has been improperly included under the regulations of his agency as one requiring the submission of a statement of employment and financial interests.

§ 735.404 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraph (b) of § 735.403 may be excluded from the reporting requirement when the agency determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflicts-of-interest situation is remote;

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government; or

(3) The use of an existing or alternative procedure approved by OPM is adequate to prevent possible conflicts of interest.

(b) A statement of employment and financial interests is not required by this subpart from an agency head, a Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in that office, or a full-time member of a committee, board, or commission appointed by the President. These employees are subject to separate reporting requirements under section 401 of the Executive order.

§ 735.404a Interests not required to be reported.

Agency regulations issued under this subpart may exclude the reporting of any interest which has, by general rule or regulation published in the Federal Register under section 208(b)(2) of title 18, United States Code, been exempted as too remote or too inconsequential to affect the integrity of employees' services.

§ 735.405 Time and place for submission of employees' statements.

An employee required to submit a statement of employment and financial interests under the regulations of his agency shall submit that statement to the office designated in the agency regulations not later than:

(a) Ninety days after the effective date of the agency regulations issued under this part if employed on or before that effective date; or

(b) Thirty days after his entrance on duty, but not earlier than ninety days after the effective date, if appointed after that effective date.

§ 735.406 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year, except when OPM authorizes a different date on a showing by an agency of necessity therefor. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code, or Subpart B of this part.

§ 735.407 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

§ 735.408 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 735.409 Information not required.

This subpart does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

[33 FR 12487, Sept. 4, 1968, as amended at 40 FR 48339, Oct. 15, 1975]

§ 735.410 Confidentiality of employees' statements.

An agency shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality, an agency shall designate which employees are authorized to review and retain the statements. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. An agency may not disclose information from a statement except as OPM or the agency head may determine for good cause shown.

§ 735.411 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

§ 735.412 Specific provisions of agency regulations for special Government employees.

(a) Agency regulations issued under this subpart for special Government employees, as a minimum, shall contain provisions covering the reporting requirements set forth in this section.

(b) Except as provided in paragraph (c) of this section, each agency head shall require each special Government employee to submit a statement of employment and financial interests which reports:

(1) All other employment; and

(2) The financial interests of the special Government employee which the agency determines are relevant in the light of the duties he is to perform.

(c) An agency head may waive the requirement in paragraph (b) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when the agency finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include:

(1) A physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients; or

(2) A veterinarian whose services are procured to provide care and service to animals.

(3) A specialist appointed for intermittent confidential intelligence consultation of brief duration.

(d) A statement of employment and financial interest required to be submitted under this section shall be submitted not later than the time of employment of the special Government employee as provided in the agency regulations. Each special Government employee shall keep his statement current throughout his employment with the agency by the submission of supplementary statements.

[33 FR 12487, Sept. 4, 1968, as amended at 34 FR 6515, Apr. 16, 1969]

PART 736—INVESTIGATIONS

Sec.

736.101 Definitions.
736.102 Purpose of investigation.
736.103 Personal investigation.
736.104 Written inquiry.
736.105 Public availability of investigative files.

Authority: Pub. L. 93-579; (5 U.S.C. 552a.)

Source: 40 FR 56651, Dec. 4, 1975, unless otherwise noted.

§ 736.101 Definitions.

In this part: (a) "Federal employment" means all civilian service for the Federal government including (1) appointments to Federal Advisory Committees or to membership agencies, whether or not salaried; (2) cooperative work assignments in which the individual has access to Federal materials such as examination booklets or performs service for or under supervision of a Federal agency but may be paid by another organization, such as a State or local government; (3) volunteer arrangements in which the individual performs service for or under the supervision of a Federal agency; and (4) volunteer or other arrangements in which the individual represents the United States Government or any agency thereof.

(b) "Agency" means any authority of the Government of the United States, whether or not it is within or subject to review by another agency and includes any executive department, military department, Government corporation, Government controlled corporation or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

§ 736.102 Purpose of investigation.

In conducting an investigation, either by personal investigation or by written inquiry, to determine suitability, eligibility or qualifications of individuals for Federal employment. Federal contracts or access to classified information or restricted areas, the investigating agency will notify the source from which information is requested of the purposes for which the information is sought and how it will be used. Procedures used in conducting investigations must take proper account of the rights of the individual being investigated as well as the rights of the individual furnishing testimony or information.

§ 736.103 Personal investigation.

In conducting a personal investigation, including a telephone inquiry, to determine suitability, eligibility or qualifications of individuals for Federal employment, Federal contracts or access to classified information or restricted areas in which selection standards demand loyalty, good character and trustworthiness, the interviewing agent will notify each person interviewed and each custodian of record contacted that all information provided, including the source's identity, may be disclosed to the individual being investigated upon that individual's request. This notification must be made at some time during the interview. The agent may promise confidentiality if requested by the source, and in his discretion notify the source that he may have confidentiality where the agent feels that such notification is necessary to secure information pertinent to his investigation or inquiry. If such a request is made, the confidentiality will apply only to the source's identity, and any information furnished by the source that would reveal the identity of the source. A promise of confidentiality will require the investigative agency and all other agencies that receive information obtained under the promise to take all reasonable precautions to protect the confidentiality of the source's identity. Pledges of confidentiality may not be assumed, and the interviewing agent may not ask a source to request confidentiality. Each agency shall prepare implementing instructions for its investigators or agents consistent with these regulations.

§ 736.104 Written inquiry.

In requesting information by a written inquiry concerning the character, loyalty and qualifications of an individual to determine suitability, eligibility or qualifications for Federal employment, Federal contracts or access to classified information or restricted areas, the form, instructions or correspondence used by an agency will include:

(a) A notification that information provided, including the respondent's identity, will be disclosed to the individual on his or her request; and

(b) Except for law enforcement or educational custodians of records,

(1) Space for the respondent to request a pledge that his or her identity will not be disclosed to the subject of the inquiry, or

(2) An offer to make special arrangements to obtain significant information which the respondent feels he or she cannot provide without a pledge of confidentiality as to identity.

§ 736.105 Public availability of investigative files.

(a) The Office or other Government agency does not disclose the personnel investigations records of individuals when the production of such records would (1) Interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; (5) disclose investigative techniques and procedures; or (6) endanger the life and physical safety of law enforcement personnel.

(b) Requests for investigative records are to be submitted to the Chief, OPM-NACI Center, FOI/PA, Boyers, Pennsylvania 16018. If the investigative file contains information that originated in another agency, the Chief, OPM-NACI Center will refer a copy of the request to that agency for decision concerning release of the information that originated in that agency.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502)

[50 FR 3313, Jan. 24, 1985]

PART 737—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

Subpart A—General Provisions

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737.3 Definitions.

Subpart B—Substantive Provisions

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AUTHORITY: Titles II and IV of Pub. L. 95-521 (October 26, 1978), as amended by Pub. L. 96-19 (June 13, 1979), 5 U.S.C. Appendix; Pub. L. 98-150 (November 11, 1983); 18 U.S.C. 207.

SOURCE: 45 FR 7406, Feb. 1, 1980; 45 FR 9253, Feb. 12, 1980, unless otherwise noted.

EDITORIAL NOTE: The following index of paragraphs is provided for the convenience of the reader:

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Subpart A—General Provisions

§ 737.1 Purpose and policy.

(a) *Authority.* Title IV of the Ethics in Government Act of 1978 ("the Act") established the Office of Government Ethics within the Office of Personnel Management ("OPM"). Section 402(a) of the Act, as amended by Pub. Law 98-150 (Nov. 11, 1983), provides in part that the Director, Office of Government Ethics ("the Director") shall provide, in consultation with OPM, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency as defined in section 105 of title 5, United States Code, and shall propose, in consultation with the Attorney General, rules and regulations to be promulgated by the President or by OGE. The purpose of this part is to issue regulations prepared by the Director which give content to the restrictions on post employment activity established by title V of the Act (18 U.S.C. 207) for administrative enforcement with respect to former officers and employees of the executive branch; generally to guide agencies in exercising the administrative enforcement authority reflected in section 18 U.S.C. 207(j); to set forth the procedures to be employed in making certain determinations and designations pursuant to the Act; and to provide guidance to individuals who must conform to the law. Criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General.

(b) *Consultation with the Attorney General.* In proposing these regulations, the Director consulted with the Attorney General as to the content of regulations governing substantive prohibitions as well as other matters. The Attorney General has advised that such regulations are consistent with his opinion as to the interpretation of the Act.

(c) *Policy and limitations.* These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations.

(1) When a former Government employee who has been involved with a particular matter decides to act as the representative for another person on that matter, such "switching of sides" undermines confidence in the fairness of proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

(2) Similarly, when a former high-level employee assists in representing another by personal presence at an appearance before the Government regarding a matter which is in dispute, such assistance suggests an attempt to use personal influence and the possible unfair use of information unavailable to others. Different considerations are involved, however, with respect to assistance given as part of customary supervisory participation in a project funded by a Government contract or grant, since a former employee's knowledge may benefit the project and thus the Government, and regular communications with associates may properly be regarded as inherent in managerial responsibility. Such assistance, when not rendered by personal presence during an appearance, is not covered by the statute.

(3) When a former Senior Employee returns to argue a particular matter to the employee's former agency in the period immediately following the termination of official employment, it appears that Government-based relationships are being used for private ends.

(4) Former officers and employees may fairly be required to avoid such activities in the circumstances specified by statute and in these regulations.

(5) The provisions of 18 U.S.C. 207 do not, however, bar any former Government employee, regardless of rank, from employment with any private or public employer after Government service. Nor do they effectively bar employment even on a particular matter in which the former Government employee had major official involvement except in certain circumstances involving persons engaged in professional advocacy. Former Government employees may be fully active in high-level supervisory positions whether or not the work is funded by the United States and in-

cludes matters in which the employee was involved while employed by the Government. The statutory provisions are not intended to discourage the movement of skilled professionals in Government, to and from positions in industry, research institutions, law and accounting firms, universities and other major sources of expertise. Such a flow of skills can promote efficiency and communication between the Government and private activities, and it is essential to the success of many Government programs. Instead, only certain acts which are detrimental to public confidence in the Government are prohibited.

(6) Departments and agencies have primary responsibility for the administrative enforcement of the post employment restrictions found in the Act. The Department of Justice may initiate criminal enforcement in cases involving aggravated circumstances; agency heads are required to report substantiated allegations of violations of 18 U.S.C. 207 to the Department of Justice and the Director, OGE. It is essential that Title V of the Act be enforced so as to advance its objectives, which include improvement in government efficiency, equal treatment for equal claims, greater public confidence in the integrity of their government, elimination of the use of public office for private gain, and securing the integrity of the government's policymaking processes. Departments and agencies should avoid enforcement actions that do not advance these objectives but instead frustrate the Government's ability to employ the skilled persons who are needed to make the programs of the Federal Government succeed. Special attention should be given to the need to preserve the free flow of expertise, especially in scientific, technological and other technical areas, from private activities to the government.

(7) The examples contained in these regulations are intended to give guidance, but are illustrative, not comprehensive. Each agency may provide additional illustration and guidance in its own regulations, consistent with that contained herein, in order to address specific problems arising in the context of a particular agency's operations.

(8) Agencies have the responsibilit
to provide assistance promptly t
former Government employees wh
seek advice on specific problems. Th
Office of Government Ethics will pro
vide advice, promptly, upon request, t
designated agency ethics officials i
such situations, but will first coordi
nate with the Department of Justic
on unresolved or difficult issues.

(9) These regulations do not sup
plant restrictions that may be con
tained in laws other than 18 U.S.C. 20
and do not incorporate restriction
contained in the code of conduct of
profession of which an employee ma
be a member.

[45 FR 7406, Feb. 1, 1980; 45 FR 9253, Fe
12, 1980, as amended at 49 FR 33118, Au
21, 1984; 50 FR 1203, Jan. 10, 1985]

§ 737.3 Definitions.

(a) *Statutory definitions.* The fo
lowing are defined terms which largel
repeat portions of the text of the sta
ute. They are set out here to permit
simplified presentation of statutory re
quirements in the regulations whic
follow. Other definitions, which sup
plement the statutory language, ar
listed in paragraph (b) of this sectio
and are set forth in detail in the sub
stantive regulations.

(1) *"United States" or "Govern
ment"* means any department, agenc
court, court-martial, or any civil, mil
tary or naval commission of th
United States, the District of Colum
bia, or any officer or employee there
of.

(2) *"Agency"* includes an Executiv
Department, a Government corpor
tion and an independent establis
ment of the executive branch, whic
includes an independent commissio
(See 18 U.S.C. 6.)

(3) *"Government Employee"* include
any officer or employee of the Execu
tive Branch (as defined in 18 U.S.
202 and, e.g., 5 U.S.C. 2104 and 2105
those appointed or detailed under
U.S.C. 3374, and a Special Governme
Employee, but shall not include an i
dividual performing services for th
United States as an independent co

tractor under a personal service contract.

(4) *"Former Government Employee"* means one who was, and is no longer, a Government employee.

(5) *"Special Government Employee"* means an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of three hundred and sixty five consecutive days, temporary duties either on a full time or intermittent basis (18 U.S.C. 202).

(6) *"Senior Employee"* means an officer or employee named in, or designated by the Director pursuant to, section 207(d) of title 18 U.S.C. to whom 207(b)(ii) and (c) shall apply (See § 737.25 of this part.)

(7) *"Particular Government matter involving a specific party"* means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.

(b) *Interpretative definitions.* Other terms defined and interpreted in the substantive regulations are:

(1) *"Acting as Agent or Attorney"*: (See § 737.5(b).)

(2) *"Actually Pending"*: (See § 737.7(c).)

(3) *"Communicating with Intent to Influence"*: (See § 737.5(b).)

(4) *"Direct and Substantial Interest"*: (See § 737.11(f).)

(5) *"Participate Personally and Substantially"*: (See § 737.5(d).)

(6) *"Particular Matter Involving a Specific Party or Parties"*: (See § 737.5(c).)

(7) *"Particular Matter"* (*without parties*): (See § 737.11(d).)

(8) *"Official Responsibility"*: (See § 737.7(b).)

(9) *"Rate of Pay"*: (See § 737.25(b)(4).)

Subpart B—Substantive Provisions

§ 737.5 Restrictions on any former Government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.

(a) *Basic prohibition of 18 U.S.C. 207(a).* No former Government employee, after terminating Government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter such employee participated personally and substantially as a Government employee.

(b) *Representation: Acting as agent or attorney, or other representative in an appearance, or communicating with intent to influence*— (1) *Attorneys and agents.* The target of this provision is the former employee who participates in a particular matter while employed by the Government and later "switches sides" by representing another person on the same matter.

[NOTE: The examples in these regulations do not incorporate the special statutory restrictions on Senior Employees, except where the terms "Senior Employee" or "Senior" are expressly used.]

Example 1: A lawyer in the Department of Justice personally works on an antitrust case involving Q Company. After leaving the Department, he is asked by Q Company to represent it in that case. He may not do so.

(2) *Others.* The statutory prohibition covers any other former employee, including managerial and technical personnel, who represents another person in an appearance or, by other communication, attempts to influence the Government concerning a particular matter in which he or she was involved. For example, a former technical employee may not act as a manufacturer's promotional or contract representative to the Government on a particular matter in which he or she

participated. Nor could such employee appear as an expert witness against the Government in connection with such a matter. (See § 737.19 for specific rules relating to expert witnesses.)

(3) *Appearances; communications made with intent to influence.* An appearance occurs when an individual is physically present before the United States in either a formal or informal setting or conveys material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes for example, correspondence, or telephone calls.

Example 1: An appearance occurs when a former employee meets with an agency employee personally to discuss a matter; or when he submits a brief in an agency administrative proceeding in his own name.

Example 2: A former employee makes a telephone call to a present employee to discuss a particular matter that is not the subject of a formal proceeding. She has made a communication.

(4) *Government visits to others premises.* Neither a prohibited appearance nor communication occurs when a former Government employee communicates with a Government employee who, at the instance of the United States, visits or is assigned to premises leased to, or owned or occupied by, a person other than the United States which are or may be used for performance under an actual or proposed contract or grant, when such communication concerns work performed or to be performed and occurs in the ordinary course of evaluation, administration, or performance of the actual or proposed contract or grant.

(5) *Elements of "influence" and potential controversy required.* Communications which do not include an "intent to influence" are not prohibited. Moreover, acting as agent or attorney in connection with a routine request not involving a potential controversy is not prohibited. For example, the following are not prohibited: a question by an attorney as to the status of a particular matter; a request for publicly available documents; or a communication by a former employee, not in connection with an adversary proceeding, imparting purely factual information. (See also § 737.11(d) of this part.)

Example 1: A Government employee, who participated in writing the specifications of a contract awarded to Q Company for the design of certain education testing programs, joins Q Company and does work under the contract. She is asked to accompany a company vice-president to a meeting to state the results of a series of trial tests, and does so. No violation occurs when she provides the information to her former agency. During the meeting a dispute arises as to some terms of the contract, and she is called upon to support Q Company's position. She may not do so. If she had reason to believe that the contractual dispute would be a subject of the meeting, she should not have attended.

(6) *Assistance.* A former employee is not prohibited from providing in-house assistance in connection with the representation of another person.

Example 1: A Government employee administered a particular contract for agricultural research with Q Company. Upon termination of her Government employment, she is hired by Q Company. She works on the matter covered by the contract, but has no direct contact with the Government. At the request of a company vice-president, she prepares a paper describing the persons at her former agency who should be contacted and what should be said to them in an effort in increase the scope of funding of the contract and to resolve favorably a dispute over a contract clause. She may do so.

(7) *Project responses not included.* In a context not involving a potential controversy involving the United States no finding of a "intent to influence" shall be based upon whatever influential effect inheres in an attempt to formulate a meritorious proposal or program.

Example 1: The employee of Q Company in the previous example is asked to design an educational testing program, which she does and transmits it to the Government. This is not prohibited despite the fact that her well-designed program may be inherently influential on a question of additional funding under the contract. She may not argue for its acceptance.

(c) *"Particular matter involving a specific party or parties"*—(1) *Specific matters vs. policy matters.* The prohibitions of subsections (a) and (b) of 18 U.S.C. 207, are based on the former Government employee's prior participation in or responsibility for a "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties" in which the United States is a party or has a direct and substantial interest. Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an insolatable transaction or related set of transactions between identifiable parties. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter. Therefore, a former Government employee may represent another person in connection with a particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding.

Example 1: A Government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from such a program.

Example 2: A Government employee reviews and approves a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that project.

Example 3: An employee is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities does not restrict the employee after leaving the Government as to particular cases involving the application of such policies, procedures, or regulations.

Example 4: An employee of the Office of Management and Budget participates substantially on the merits of a decision to reduce the funding level of a program, which has the effect of reducing the amount of money which certain cities receive to conduct youth work programs. After leaving the Government she may represent any of the cities in securing funds for its youth program, since her participation was in connection with a program, not a particular matter involving specific parties.

Example 5: An agency attorney participates in drafting a standard form contract and certain "standard terms and clauses" for use in future contracts. He is not thereafter barred from representing a person in a dispute involving the application of such a "standard term or clause" in a particular contract in which he did not participate as a Government employee.

(2) *Technical matters.* In connection with technical work, participation in projects generally involving one or more scientific or engineering concepts, in feasibility studies, or in proposed programs prior to the formulation of a contract will not restrict former Government employees with respect to a contract or specific programs entered into at a later date.

Example 1: A Government employee participates significantly in formulating the "mission need" of a project pursuant to OMB Circular No. A-109, and the award of a contract to Z Company, the purpose of which is to propose alternative technical approaches. He is not barred, after leaving Government service, from representing Q Company which later seeks a contract to manufacture one of the systems suggested by the Z Company.

Example 2: A Government employee, who has worked for years on the design of a new satellite communications system, joins C Company. Later, the Government issues a "request for proposals" ("rfp") to construct the new system, which is circulated generally to industry. The employee proposes to act as C Company's representative in connection with its anticipated proposals for the contract. He may do so. The satellite contract became a particular matter when the rfp was being formulated; it would ordinarily not become one involving a specific party or parties until initial proposals or indications of interest therein by contractors were first received. Moreover, if the employee's work for C Company were limited to the formulation and communication of a proposal in response to the rfp, it would not be prohibited to the extent it involved a communication for the purpose of furnishing scientific or technological information to the Government, exempt under 18 U.S.C. 207(f). See § 737.15 below. (See paragraph (3) below as to a case where the employee's own participation may cause a different result.)

(3) *Relationship of personal participation to specificity.* In certain cases, whether a matter should be treated as a "particular matter involving specific parties" may depend on the employee's own participation in events which give particularity and specificity to the matter in question. For example, if a Government employee (i) personally participated in that stage of the for-

mulation of a proposed contract where significant requirements were discussed and one or more persons was identified to perform services thereunder and (ii) actively urged that such a contract be awarded, but the contract was actually awarded only after the employee left, the contract may nevertheless be a particular matter involving a specific party as to such former Government employee.

Example 1: A Government employee advises her agency that it needs certain work done and meets with private firm X to discuss and develop requirements and operating procedures. Thereafter, the employee meets with agency officials and persuades them of the need for a project along the lines discussed with X. She leaves the Government and the project is awarded by other employees to firm X. The employee is asked by X to represent it on the contract. She may not do so.

(4) *The same particular matter must be involved.* The requirement of a "particular matter involving a specific party" applies both at the time that the Government employee acts in an official capacity and at the time in question after Government service. The same particular matter may continue in another form or in part. In determining whether two particular matters are the same, the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest.

Example 1: A Government employee was substantially involved in the award of a long-term contract to Z Company for the development of alternative energy sources. Six years after he terminates Government employment, the contract is still in effect, but much of the technology has changed as have many of the personnel. The Government proposes to award a "follow on" contract, involving the same objective, after competitive bidding. The employee may represent Q Company in its proposals for the follow-on contract, since Q Company's proposed contract is a different matter from the contract with Z Company. He may also represent Z Company in its efforts to continue as contractor, if the agency determines on the basis of facts referred to above, that the new contract is significantly different in its particulars from the old. The former employee should first consult his agency and request a written determination before undertaking any representation in the matter.

Example 2: A Government employee reviewed and approved certain wiretap applications. The prosecution of a person overheard during the wiretap, although not originally targeted, must be regarded as part of the same particular matter as the initial wiretap application. The reason is that the validity of the wiretap may be put in issue and many of the facts giving rise to the wiretap application would be involved. *Other examples:* See § 737.5(b)(1), Example 1, and (c), Example 2.

(5) *United States must be a party or have an interest.* The particular matter must be one in which the United States is a party, such as in a judicial or administrative proceeding or a contract, or in which it has a direct and substantial interest. The importance of the Federal interest in a matter can play a role in determining whether two matters are the same particular matter.

Example 1: An attorney participated in preparing the Government's antitrust action against Z Company. After leaving the Government, she may not represent Z Company in a private antitrust action brought against it by X Company on the same facts involved in the Government action. Nor may she represent X Company in that matter. The interest of the United States in preventing both inconsistent results and the appearance of impropriety in the same factual matter involving the same party, Z Company, is direct and substantial. However, if the Government's antitrust investigation or case is closed, the United States no longer has a direct and substantial interest in the case.

Example 2: A member of a Government team providing technical assistance to a foreign country leaves and seeks to represent a private contractor in making arrangements with the Government to perform the same service. The proposed new contract may or may not be considered a separate matter, depending upon whether the United States has a national interest in maintaining the original contract. The agency involved must be consulted by the former employee before the representation can be undertaken.

(d) *"Participate personally and substantially"*—(1) *Basic requirements.* The restrictions of section 207(a) apply only to those matters in which a former Government employee had "personal and substantial participation," exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. "Substantially," means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular matter involving a specific party." (See paragraph (c) of this section.) (See also § 737.9(f) of this part.)

Example 1: If an officer personally approves the departmental budget, he does not participate substantially in the approval of all items contained in the budget. His participation is substantial only in those cases where a budget item is actually put in issue. Even then, the former Government employee is not disqualified with respect to an item if it is a general program rather than a particular matter involving a specific party. The former Government employee may, however, have official responsibility for such matters. (See § 737.7(b).)

Example 2: A Government lawyer is not in charge of, nor has official responsibility for a particular case, but is frequently consulted as to filings, discovery, and strategy. Such an individual has personally and substantially participated in the matter.

(2) *Participation on ancillary matters.* An employee's participation on subjects not directly involving the substantive merits of a matter may not be "substantial," even if it is time-consuming. An employee whose responsibility is the review of a matter solely for compliance with administrative control or budgetary considerations and who reviews a particular matter for such a purpose should not be regarded as having participated substantially in the matter, except when such considerations also are the subject of the employee's proposed representation. (See § 737.7(b)(3) of this part.) Such an employee could theoretically cause a halt in a program for noncompliance with standards under his or her jurisdiction, but lacks authority to initiate a program or to disapprove it on the basis of its substance.

(3) *Role of official responsibility in determining substantial participation.* "Official responsibility" is defined in § 737.7(b)(1). "Personal and substantial participation" is different from "official responsibility." One's responsibility may, however, play a role in determining the "substantiality" of an employee's participation. For example, ordinarily an employee's forbearance on a matter is not substantial participation. If, however, an employee is charged with responsibility for review of a matter and action cannot be undertaken over his or her objection, the result may be different. If the employee reviews a matter and passes it on, his or her participation may be regarded as "substantial" even if he or she claims merely to have engaged in inaction.

(e) *Agency responsibility in complex cases.* In certain complex factual cases, the agency with which the former Government employee was associated is likely to be in the best position to make a determination as to certain issues, for example, the identity or existence of a particular matter. Designated agency ethics officials should provide advice promptly to former Government employees who make inquiry on any matter arising under these regulations.

§ 737.7 Two-year restriction on any former Government employee's acting as representative as to a particular matter for which the employee had official responsibility.

(a) *Basic prohibition of 18 U.S.C. 207(b)(i).* No former Government employee, within two years after terminating employment by the United States, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party (3) if such matter was actually pending under the employee's responsibility as an officer or employee within period of one year prior to the termination of such responsibility.

(b) *"Official responsibility"*—(1) *Definition.* "Official responsibility" is defined in 18 U.S.C. 202 as, "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government actions."

(2) *Determining official responsibility.* Ordinarily, the scope of an employee's "official responsibility" is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority. All particular matters under consideration in an agency are under the "official responsibility" of the agency head, and each is under that of any intermediate supervisor having responsibility for an employee who actually participates in the matter within the scope of his or her duties.

(3) *Ancillary matters and official responsibility.* "Administrative" authority as used in the foregoing definition means authority for planning, organizing and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter such as the regularity of budgeting procedures, public or community relations aspects, or equal employment opportunity considerations. Responsibility for such an ancillary consideration does not constitute responsibility for the particular matter, except when such a consideration is also the subject of the employee's proposed representation.

Example 1: An agency's comptroller would not have official responsibility for all programs in the agency, even though she must review the budget, and all such programs are contained in the budget.

Example 2: Within two years after terminating employment, an agency's former comptroller is asked to represent Q Company in a dispute arising under a contract which was in effect during the comptroller's tenure. The dispute concerns an accounting formula, under the contract, a matter as to which a subordinate division of the comptroller's office was consulted. She may not represent Q Company on this matter.

(4) *Knowledge of matter pending required.* In order for a former employee to be barred from representing another as to a particular matter, he or she need not have known, while employed by the Government, that the matter was pending under his or her official responsibility. However, the former employee is not subject to the restriction unless at the time of the proposed representation of another, he or she knows or learns that the matter had been under his or her responsibility. Ordinarily, a former employee who is asked to represent another on a matter will become aware of facts sufficient to suggest the relationship of the prior matter to his or her former agency. If so, he or she is under a duty to make further inquiry, including direct contact with an agency's designated ethics official where the matter is in doubt.

(5) *Self-disqualification.* A former employee cannot avoid the restrictions of this section on the ground by self-disqualification with respect to a matter for which he or she otherwise had official responsibility. However, self-disqualification is effective to eliminate the restriction of section 207(a).

(c) *"Actually pending."* "Actually pending" means that the matter was in fact referred to or under consideration by persons within the employee's area of responsibility, not that it merely could have been.

Example 1: A staff lawyer in a department's Office of General Counsel is consulted by procurement officers on the correct resolution of a contractual matter involving Q Company. The lawyer renders an opinion resolving the question. The same legal question arises later in several contracts with other companies, but none of the disputes with such companies is referred to the Office of the General Counsel. The General Counsel has official responsibility for the determination of the Q Company matter. The other matters were never "actually pending" under that responsibility, although as a theoretical matter, such responsibility extended to all legal matters within the department.

(d) *Other essential requirements.* All other requirements of the statute must be met before the restriction on representation applies. The same considerations apply in determining the existence of a "particular matter involving a specific party," a representation in an "appearance," or "intent to influence," and so forth as set forth under § 737.5 of this part.

Example 1: During her tenure as head of an agency, an officer's subordinates undertook major changes in agency enforcement standards involving occupational safety. Eighteen months after terminating Government employment, she is asked to represent Z Company which believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the agency head terminated her employment. She may represent Z Company because the matter pending under her official responsibility was not one involving "a specific party." (Moreover, the time-period covered by 18 U.S.C. 207(c) has elapsed.)

(e) *Measurement of two-year restriction period.* The statutory two-year period is measured from the date when the employee's responsibility in a particular area ends, not from the termination of Government service, unless the two occur simultaneously. The prohibition applies to all particular matters subject to such responsibility in the one-year period before termination of such responsibility.

Example 1: The Director, Import/Export Division of A Agency retires after 26 years of service and enters private industry as a consultant. He will be restricted for two years with respect to all matters which were actually pending under his official responsibility in the year before his retirement.

Example 2: An employee transfers from a position in A Agency to a position in B Agency, and she leaves B Agency for private employment 9 months later. In 15 months she will be free of restriction insofar as matters which were pending under her responsibility in A Agency in the year before her transfer. She will be restricted for two years in respect of B Agency matters which were pending in the year before her departure for private employment.

§ 737.9 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.

(a) *Basic prohibition of 18 U.S.C. 207(b)(ii).* No former Senior Employee (see § 737.3(6)), within two years after terminating employment by the United States, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person by personal presence at any formal or informal appearance, (1) before the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter he or she participated personally and substantially.

(b) *Limitation to "representational" assistance by "personal presence" at an appearance.* Section 207(b)(ii) is limited to assistance "in representing" another person by "personal presence" at an "appearance" before the United States. Different in scope from sections 207(a) and 207(b)(i), it does not apply to assistance in connection with an oral or written communication made with an intent to influence which does not involve an appearance. Nor does it bar assistance in preparation for either a formal or informal personal appearance or an appearance by written submission in a formal proceeding where the former employee is not personally present before the Government or a Government employee. The provision is designed to prevent the former Senior Employee from playing any auxiliary role during a negotiation proceeding or similar transaction with the Government so that he or she does not appear to be lending personal influence to the resolution of a matter and cannot do so in fact.

Example 1: A former Senior Employee makes suggestions as to the content of a letter to be sent to the Government on a matter in which he had participated. No violation occurs.

(c) *Managerial and other off-scene assistance.* The statute does not prohibit a former Senior Employee's advice and assistance to his or her organization's representatives which does not involve his or her personal presence at an appearance before the Government. The former Senior Employee's preparation of documents to be presented in any formal or informal proceeding does not constitute personal presence at an appearance, even where submission of such a document might technically constitute an appearance.

Example 1: A former Senior Employee attends a hearing on a matter in which she had participated personally and substantially while in the Government. She speaks with the representative of a private party during the hearing. A violation occurs if the former Senior Employee lends assistance to the representative in that conversation.

Example 2: A Senior Justice Department lawyer personally works on an antitrust case against Z Company. After leaving the Department, she is asked to discuss legal strategy with lawyers representing Z Company on that same antitrust case, to write portions of a brief and to direct the research of the staff working on the case. Any such aid would not be prohibited by the statute, but would likely be prohibited by professional disciplinary rules.

(d) *Representational assistance.* The statute seeks to prevent a former Senior Employee from making unfair use of his or her prior governmental position by prohibiting all forms of assistance in the representation of another when personally present at an appearance, including giving advice as to how the representation in an appearance should be conducted, supplying information, participating in drafting materials, or dealing with forensic or argumentative matters (such as testimony, methods of persuasion, or strategy of presentation).

(e) *Measurement of restriction period.* The statutory two-year period is measured from the date of termination of employment in the Senior Employee position held by the former employee when he or she participated personally and substantially in the matter involved. (cf. § 737.7(e))

(f) *Other Essential Requirements.* All conditions of the statutory prohibition must be met. Specifically, the former employee, (1) must have been a "Senior Employee," (2) who "participated personally and substantially" (See § 737.5(d) of this part) in (3) a "particular matter involving a specific party." (See subpart § 737.5(c) of this part.)

(g) *General Examples:*

Example 1: A Senior Federal Trade Commission Employee, an economist by profession, participates in an investigation involving X Company, and a proceeding is commenced against X Company based on the investigation. After leaving the Commission, he offers to serve as a consultant to the lawyers for X Company on certain economic matters involved in the proceeding. He attends the proceeding and at the close of each day, meets in the lawyers' office to advise them. Such conduct violates the statute.

Example 2: A Senior Employee of the Department of the Treasury participates in a number of projects with universities and financial research institutions funded by Government grants. After leaving the Government, she becomes dean of a graduate school of business which performs work under a number of such grants. She may, in the discharge of her duties, supervise research and advise as to how funds under such a contract should be allocated, whether or not these matters are, as is likely, communicated to her former Department by the graduate school's representatives. (See § 737.11.)

Example 3: A Senior Defense Department official participated personally and substantially in a contract award to F Company for fighter planes. After leaving the Department, the former official goes to work for F Company. Subsequently, F Company desires to renegotiate prices and a pension provision on the fighter plane contract, matters in which dispute is anticipated. The former official could not attend a meeting with Government employees at which such matters will be discussed and give assistance to those representing F Company in the negotiations. He could generally render advice as long as he remained absent from the negotiations.

Example 4: A Senior Justice Department lawyer participated in an antitrust case against Q Company, which is represented by Y law firm. Immediately after leaving, the Department, she goes to work with Y law firm, and assists at a trial representing Q Company in a different antitrust case, not involving the allegations in the Government case. Such assistance would not be barred because it does not occur in connection with the same particular matter.

Example 5: A Senior Employee of the Department of Health and Human Services leaves to take a university position. The former official's new duties include various HHS contracts which the university holds. Some of the contracts were awarded by a division within HHS which was under her official responsibility. She is not barred from assistance in negotiations with respect to such contracts, because the restriction applies only to those matters in which she had participated personally and substantially, not to those matters for which she had official responsibility. Note, however, that any participation by her as a representative would be barred by 18 U.S.C. 207(b)(i) as described in § 737.7 of this part. (But see § 737.11.)

Example 6: A Senior scientist with the Food and Drug Administration was personally and substantially involved in a licensing proceeding concerning a specific drug. After leaving the FDA, he is employed by the manufacturer of the drug. There he engages in research, indicating that the drug is safe and effective, which his employer later presents to FDA in connection with the proceeding. He assists during this presentation. Such assistance would normally be restricted but may be allowed to the extent that the former official is furnishing scientific information to the Government. (See 18 U.S.C. 207(f) and § 737.15 of this part.)

Example 7: A former Senior Employee of the Federal Communications Commission leaves the agency to join a graduate school faculty. In one of his courses, which from time to time includes Government employees, he discusses, unfavorably to the Commission, a specific licensing case in which he was personally and substantially involved. The restriction does not apply because the conduct does not occur in connection with any representational activities.

§ 737.11 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.

(a) *Basic prohibition of 18 U.S.C. 207(c).* For a period of one year after terminating employment by the United States, no former Senior Employee (other than a special Government employee who serves for fewer than sixty days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent, anyone in any formal or informal appearance before, or with the intent to influence, make any written or oral communication on behalf of anyone to (1) his or her former department or agency, or any of its officers or employees, (2) in connection with any particular Government matter, whether or not involving a specific party, which is pending before such department or agency, or in which it has a direct and substantial interest.

(b) *Transactions exempted from the basic prohibition of 18 U.S.C. 207(c).* The prohibition set forth above shall not apply to an appearance, a communication, or representation by a former Senior Employee, who is:

(1) An elected official of a State or local government, acting on behalf of such government, or

(2) Whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital or organization.

Example 1: A former Senior Employee of the Federal Highway Administration is appointed to the position of Secretary of Transportation for the State of Kansas. He would not be prohibited from transacting business with his former agency concerning new matters on behalf of the State. He would, however, be restricted as to 207(a) and 207(b) matters.

Example 2: A former Senior Employee of the Department of Housing and Urban Development establishes a consulting firm and is engaged by the City of Los Angeles to aid it in procuring a particular grant. He may not represent Los Angeles before his former Department because his "principal occupation or employment" is not with such city.

Example 3: A former Senior Employee of the Department of Education founds a vocational school for the training of legal paraprofessionals and associated staff. He desires to communicate with officials at his former Department for the purpose of establishing a program of assistance to such institutions. He may not do so, since the vocational school is not an "accredited, degree granting institution of higher education."

(c) *No prior involvement required.* The prohibition contained in this section applies without regard to whether the former Senior Employee had participated in, or had responsibility for, the particular matter and includes matters which first arise after the employee leaves Government service. The section aims at the possible use of personal influence based upon past Governmental affiliations to facilitate the transaction of business.

(d) *Specific parties unnecessary.* The particular matter in which the former Senior Employee proposes to act before his or her former agency need not be one "involving specific parties," and thus is not limited to disputed proceedings or contracts in which a party has already been identified. However, the restriction does not encompass every kind of matter, but only a particular one similar to those cited in the statutory language, *i.e.*, any judicial or other proceeding, application, request for a ruling or determination, contract, claim, controversy, investigation, charge, accusation, or arrest. Rulemaking is specifically included. Thus such matters as the proposed adoption of a regulation or interpretive ruling, or an agency's determination to undertake a particular project or to open such a project to competitive bidding are covered. Not included are broad technical areas and policy issues and conceptual work done before a program has become particularized into one or more specific projects. The particular matter must be pending before the agency or be one in which the agency has a "direct and substantial interest."

(NOTE: Each post employment activity in the examples in this section is assumed to take place within one year of termination of Government employment.)

Example 1: A Senior Employee of the Department of Health and Human Services leaves Government employment for private practice, and shortly thereafter telephones a former associate urging that the Department (a) adopt a new procedure to put a ceiling on hospital costs; (b) not adopt a particular rule proposed for drug testing; and (c) oppose a bill pending in Congress relating to such drug testing. He is prohibited from attempting to influence his former coworker on any of these matters. The first, not yet pending, is of interest to the Department; the second is pending in the Department; and the third is pending elsewhere, and is of interest to the Department. Note that the former Senior Employee may, however, communicate the same views to Congress, other agencies, the public or the press.

Example 2: A recently retired Senior Employee of the Department of Defense believes that the Department's general emphasis on manned aircraft is not in the national interest. After his departure, he may continue to argue the point to the Department.

(e) *Element of controversy or influence required.* The prohibition on acting as a representative or attempting to influence applies to situations in which there is an appreciable element of actual or potential dispute or an application or submission to obtain Government rulings, benefits or approvals, and not to a situation merely involving, for example: the transmission or filing of a document that does not involve an application for Government benefit, approval or ruling; a request for information; purely social or informational communications; or those required by law or regulations (in situations other than adversary proceedings). Each agency should, after consulting with the Director or the Attorney General, as appropriate, give guidance on the kinds of applications, filings and other matters which are not prohibited by section 207(c).

Example 1: A former Senior Employee of the Internal Revenue Service prepares and mails a client's tax return. This is not a prohibited act. Should any controversy arise in connection with the tax return, the former employee may not represent the client, but may be called upon to state how the return was prepared.

Example 2: A former Senior Employee of the Securities and Exchange Commission prepared and transmitted for filing to the Commission a client's annual report on form 10-K. This is not a violation, because the 10-K is a disclosure report, not intended to obtain a Government benefit or ruling.

Example 3: A former Senior Employee of the Securities and Exchange Commission becomes executive vice-president of a major industrial corporation, registered under the Securities Exchange Act of 1934. Pursuant to Commission regulations, the officers of the corporation are required to sign certain filings on behalf of the corporation, which are transmitted to the Commission. The employee may review, concur or request changes in, and sign any such filing required to be transmitted to the Commission.

(f) *Agency activity or interest in matter.* The restriction applies to the former employee's contacts with his or her former agency in connection with a matter before or of "direct and substantial interest" to the agency.

Example 1: A former Senior Employee of the Securities and Exchange Commission is asked to represent Z Company in a new matter before the Commission, one in which the former employee had no prior involvement. He may not do so.

Example 2: The matter in the foregoing example is referred to the Department of Justice for prosecution, and the former employee is asked for the first time to represent Z Company in the criminal proceeding. The matter is likely to be of direct and substantial interest to the Commission. If so, the former employee may not communicate with the Commission in the matter. However, the former Senior Employee may communicate with the Commission in order to determine whether it asserts a direct and substantial interest in the criminal proceeding. In the event of a negative answer to the question, the former Senior Employee may communicate with the Commission.

Example 3: In connection with an entirely new matter a former Senior Employee of the Securities and Exchange Commission undertakes the representation of Z Company in private litigation brought by Q Company, (*e.g.*, a private action arising under the Securities Exchange Act of 1934). Before the suit was commenced, there was no actual expression of interest by the Commission in the matter. As the litigation develops, an important question of statutory interpretation is raised, and the Commission files a brief as *amicus curiae* (friend of the court). The former Senior Employee may respond to the brief and need not withdraw from representation of Z Company, but he may not otherwise communicate with the Commission in the matter. If the Commission were to commence a proceeding or investigation again, Z Company on the basis of the same facts involved in the private litigation, the former employee could continue his representation in the private litigation, but could not represent Z Company in the Commission's proceeding until after the expiration of one year from the termination of his employment with the Commission.

[NOTE: Where an agency becomes a party to a proceeding subsequent to its commencement, the question whether a former Senior Employee may continue representation should ordinarily be decided by the court on a motion for disqualification in the particular circumstances.]

Example 4: In connection with a new matter, a former Senior Employee of the Federal Food and Drug Administration, since retired to private law practice, is asked to consult and assist in the preparation of briefs to be filed with the Administration on a new particular matter. He may do so, but he should not sign briefs or other communications or take any other action that might constitute an appearance.

(g) *Application or proposals for funding of research.* In connection with any application or proposal for Government funding of research, the restrictions of this section do not prevent a former Senior Employee from assuming responsibility for the direction or conduct of such research and from providing scientific or technological information to the Senior Employee's former agency regarding such research. The former Senior Employee may not, however, submit the application on behalf of the applicant or argue for its approval or funding by the agency.

Example 1: A former Senior Employee of the National Institute of Health (NIH), employed by a non-exempt research institute, prepares an application to NIH for a research contract. The application is submitted to NIH by the institute and lists the Senior Employee as principal investigator. The Senior Employee does not violate 18 U.S.C. 207(c) by preparing the application or by being listed as principal investigator, since these are not representational activities. He may also sign an assurance to NIH, as part of the application, that he will be responsible for the scientific and technical direction and conduct of the project if an award is made. He may also communicate with NIH to provide scientific or technical information on the application, including presentation to NIH personnel at the research site, so long as he does not argue for approval or funding of the application.

(h) *Personal matters.* Unlike the provisions of subsections 207(a) and (b) the restrictions of this section apply when the former Senior Employee seeks to represent himself or herself. However, they do not apply to appearances or communications concerning matters of a personal and individual nature, such as personal income taxes, pension benefits, or the application of any provision of these regulations to an undertaking proposed by a Senior Employee. (See 18 U.S.C. 207(i).) A former Senior Employee may also appear *pro se* (on his or her own behalf) in any litigation or administrative proceeding, involving the individual's former agency. The former employee may not contact his or her former agency in order to secure an item of business, except for (1) discussions in contemplation of being employed by the agency as a consultant or otherwise; or (2) a proposal to furnish scientific or technological information to the Government.

Example 1: Any former Government Employee may contact his or her former agency to seek information or determinations as to matters in question under these regulations or under 18 U.S.C. 207, such as whether a particular matter is considered to have been under the employee's official responsibility, whether a matter is one in which the agency asserts a direct and substantial interest, or whether a current matter is considered to be the same as that in which the employee had been involved.

(i) *Statements based on special knowledge.* The restrictions of the section do not prevent a former Senior Employee from making or providing a statement, which is based on the former Senior Employee's own special knowledge in the particular area that is the subject matter of the statement, provided that no compensation is thereby received, other than that regularly provided by law or regulation for witnesses. (See 18 U.S.C. 207(i).)

Example 1: A former Senior Employee may make any statement of his own views to his former agency on any subject matter in which he has no substantial pecuniary interests, acting on his own behalf.

Example 2: A former Senior Employee is called by his successor at the agency for the purpose of eliciting some information on a matter in which he had been involved in an official capacity. His response is not prohibited.

Example 3: A former Senior Employee may recommend an individual to her former agency for employment, based on her own personal knowledge of the individual's qualifications and character.

(j) *Measurement of one-year restriction period.* The statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in a particular agency ends, not from the termination of Government service, unless the two occur simultaneously. (See § 737.7(e).)

§ 737.13 Limitation of restrictions of 18 U.S.C. 207(c) to less than that whole of a department or agency.

(a) *Authority.* There are two methods by which the application of the one-year "cooling-off" prohibition of 18 U.S.C. 207(c) may be limited to less than the entirety of a department or agency. First, 18 U.S.C. 207(e) provides that the Director may by rule designate as "separate" a statutory agency or bureau which exercises functions that are distinct and separate from the remaining functions of the parent department or agency of which it is part. (see 737.31) Second, under the provisions of 18 U.S.C. 207(d)(1)(C), the Director may restrict the application of the prohibition as to a former employee (other than one who served in an Executive Level position or at a uniformed service grade level of 0-9 and above) insofar as it affects his or her communications with persons in an unrelated agency or bureau within his former parent department or agency which has separate and distinct subject matter jurisdiction from the agency or bureau in which he or she served. (see § 737.32)

(b) *Distinctions between the 18 U.S.C. 207(e) and 207(d)(1)(C) provisions.* (1) The authority granted by 18 U.S.C. 207(e) is applicable solely to a separate *statutory* agency or bureau, that is, one created by statute or the functions of which are expressly referred to by statute in such a way that is appears that Congress intended that its functions were to be separable. A determination made under this 18 U.S.C. 207(e) does not, however, benefit former heads of the separate statutory agency or bureau. Such a determination does, however, work to the benefit of other employees at Executive Level or at uniformed service grade level of 0-9 or above.

(2) The determination made pursuant to section 207(d)(1)(C) is intended to provide similar recognition of separability where the subordinate agency or bureau has been *administratively* created. A determination of such separability does inure to the benefit of the head of the separate component if he is a Senior Employee designated by the Director. However, the determination is not beneficial to persons, including the head of a separate component, in positions at Executive Level or serving at uniformed service grade level of 0-9 above.

(c) *Separate Statutory Components*—(1) *Procedure.* Each agency shall notify the Director, in writing, of any separate statutory agency or bureau which it desires to submit for such designation under 18 U.S.C. 207(e), providing:

(i) A description of the functions of the agency or bureau, indicating the basis on which such functions are claimed to be distinct and separate from the parent organization;

(ii) The separate statutory basis of the agency or bureau; and

(iii) Identification of those positions in the parent agency with official responsibility for supervision of such separate statutory agency or bureau.

(2) *Standards.* A parent agency may propose as a "separate" statutory agency an agency or bureau (i) created specifically by statute, (ii) the functions of which are expressly referred to by statute in such a way as to indicate that a separate component was intended or (iii) which is the successor to either of the foregoing; but a decision as to the sufficiency of the statutory authority as well as the separability of functions shall be reserved to the Director, OGE.

(3) *Effect of designation.* If a subordinate part of an agency is designated as "separate" by the Director, then Senior Employees of such separate agency and those of the parent agency are not subject to the restrictions of section 207(c) as to each others' agencies—except that the prohibition of section 207(c) remains applicable to the former head of a "separate" subordinate agency and to former Senior Employees of the parent agency whose official responsibility included supervision of the subordinate agency.

Example 1: A former Senior Employee of the Product Agency in Executive Department leaves and joins a law firm which represents Q Corporation. Product Agency has been designated by the Director as separate from Executive Department. The former employee is not restricted from representing the Q Corporation on a new matter before the Executive Department.

(d) *Separate Nonstatutory Components*—(1) *Procedure.* Each agency may notify the Director, in writing, of a component agency, bureau or office having separate and distinct subject matter jurisdiction which it desires to submit for designation under 18 U.S.C. 207(d)(1)(C), providing:

(i) A description of the subject matter jurisdiction of such component, indicating the basis on which such jurisdiction is claimed to be separate and distinct from certain other agencies, bureaus and offices of the parent agency;

(ii) A description of the nature of the connections and interactions between such component and certain other agencies, bureaus or offices of the parent agency indicating the basis on which the component is claimed to be unrelated;

(iii) A statement of the basis on which it is claimed that no potential exists for use by former Senior Employees of such component of undue influence or unfair advantage with respect to the named other agencies, bureaus or offices of the parent agency, based on past Government service; and

(iv) Identification of those organizational units of the parent agency having administrative or operational authority over such component agency, bureau or office.

(2) *Standards.* (i) A parent agency may propose as "separate" from other parts of a department or agency any agency or bureau having subject matter jurisdiction separate and distinct from one or more other portions of the department or agency accompanied by a showing that there would be no potential for use of undue influence or unfair advantage based upon past Government service if a former employee of one such subordinate agency or bureau communicated with employees of such other portions of the department or agency.

(ii) A determination under this section rests solely with the Director, OGE, and is available only for those subordinate components which would, but for the lack of a statutory basis, qualify for separate agency treatment under 18 U.S.C. 207(e).

(iii) Where one component has supervisory authority over another, the two components may not be considered separate and distinct for purposes of this section.

(iv) The requirement of "separate and distinct subject matter jurisdiction" may be met in at least two ways. First, the substantive areas of coverage may be distinct. For example, an office or bureau within the parent agency may handle only maritime matters. Second, the regional area of coverage may be different. For example, one regional office may, on appropriate facts, be considered separate and distinct from other regional offices and from the parent agency—except for the bureau or office in the parent agency which is responsible for its supervision.

(v) It is necessary to specify the "unrelated agency or bureau within the same department or agency" as to which it is recommended that post employment communication be permitted. For example, one bureau may involve a subject matter distinct from some, but not all, parts of the parent department. Attempts to fractionalize a department could, however, become deeply complicated and involve difficult judgments and fact-finding. OGE will not usually act on such cases, and submissions should be confined to relatively clear cases.

(3) *Effect of determination.* If a component agency, bureau or office is determined to be separate by the Director, then Senior Employees of such component are not subject to the restrictions of 18 U.S.C. 207(c) and § 737.11 as to the remaining agencies, bureaus or offices of the parent agency (except certain such agencies, bureaus or offices as specified in § 737.32)—except that the prohibition of section 207(c) and § 737.11 shall remain applicable (i) to those former Senior Employees of such component who served in positions designated by 18 U.S.C. 207(d)(1)(A) and (B) and (ii) to former Senior Employees of such component with respect to the parent agency (as defined in § 737.13(e)). Such limited application of 18 U.S.C. 207(c) may be available for the head of a separate component, unlike the limitation of 18 U.S.C. 207(e), as determined by the Director.

Example 1: In the Department of Justice, while the Antitrust Division may be "separate" from other Divisions, it is not separate from the immediate office of the Attorney General.

§ 737.15 Exemption for scientific and technological information.

(a) *Exemption.* The making of communications solely for the purpose of furnishing scientific or technological information pursuant to agency procedures is exempt from all prohibitions and restrictions set forth in §§ 737.5-737.11 of these regulations (subsections (a), (b), and (c) of 18 U.S.C. 207). This exemption allows the free exchange of such information regardless of a former Government employee's prior participation in or responsibility for the matter. The former Senior Employee should not argue for the acceptance of a proposal. The exemption is not limited to communications constituting the furnishing of information, but includes those "for the purpose of" doing so. No violation occurs when, for example, a former Government employee working on a project makes contact to determine the kind and form of information required, or the adequacy of information already supplied, so long as agency procedures are satisfied.

Example 1: A project manager, regardless of prior involvement in a particular matter, may contact the Government to determine deficiencies in system design or performance, furnish scientific or technological information relating to a solution or approach to a problem, seek related information from the Government; advise and supervise others who are involved as to such matters; and meet with Government technical experts for such purpose; provided in each case that there is compliance with such agency regulations as have been issued.

(b) *Necessary information.* Scientific and technological information includes feasibility, risk, cost, and speed of implementation, when necessary to appreciate fairly the practical significance of the information. The Government may and should be fully informed of the significance of scientific and technological alternatives.

(c) *Intent to influence.* The furnishing of meritorious or convincing scientific or technological proposals does not constitute an intent to influence. (See § 737.5(b)(7) of this part.)

(d) *Expert testimony.* This exemption does not include testimony as an "expert" in adversary proceedings in a matter in which the United States is involved or has an interest. Such testimony is governed by regulations set forth in § 737.19. As to assistance as an expert or consultant, see § 737.9(g), Example 7.

(e) *Agency responsibility for procedures.* The primary responsibility for developing procedures to guide activity under this exemption lies with each agency, so that such procedures comport with the particular characteristics of agency programs and needs. Such procedures will be reviewed periodically by the Director. In promulgating procedures, an agency may take into consideration: Limiting communications to certain formats which are least conducive to the use of personal influence; segregating, to the extent possible, meetings and presentations involving matters of technical substance from those involving other aspects of the relationship; requiring that the designated agency ethics official be informed of instances where the exemption is used; or employing more restrictive practices in circumstances involving either immediate competition for contracts or applications for grants than in those involving an ongoing project.

§ 737.17 Exemption for persons with special qualification in a technical discipline.

(a) *Applicability.* A former Government employee may be exempted from the restrictions on post employment practices if the head of the agency concerned with the particular matter, in consultation with the Director, executes a certification published in the FEDERAL REGISTER that such former Government employee has outstanding qualifications in a scientific, technological, or other technical discipline; is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by such former Government employee's participation.

(b) *When appropriate.* This exemption should generally be utilized only where the former Government employee's involvement is needed on so continuous and comprehensive a basis that compliance with the procedures adopted for the communication of technical information (see § 737.15), or other actions to isolate the former Government employee from other aspects of the matter, would be burdensome and impractical.

(c) *Certification authority.* Certification should take place at no lower level than the head of the agency, the deputy thereof, or in the absence of both, the acting agency head. Consultation with the Director shall precede any certification. The exemption takes place upon the execution of the certification, provided that it is transmitted to the FEDERAL REGISTER for publication.

(d) *Agency registry.* An agency may establish a registry for current employees, wherein the nature of their qualifications in one or more technical fields is certified after review by a supervisor, as a basis for establishing such qualifications in connection with, and to expedite, a later request for certification, should the necessity for such request arise.

§ 737.19 Testimony and statements under oath or subject to penalty of perjury.

(a) *Statutory basis.* Section 207(h) provides:

> "Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury."

(b) *Applicability.* A former Government employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Government employee. This provision does not, however, allow a former Government employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c) to testify on behalf of another as an expert witness except: (1) To the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the former Government employee participated, utilizing his or her expertise, or (2) in any proceeding where it is determined that another expert in the field cannot practically be obtained; that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Government employee's testimony is required in the interest of justice.

(c) *Statements under penalty of perjury.* A former Government employee may make any statement required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

§ 737.21 Partners of present or former Government employees.

(a) *Scope.* Section 207(g) of 18 U.S.C. prohibits a partner of a current Government employee from acting as agent or attorney before the United States in a particular Government matter in which such Government employee participates, or did participate, personally and substantially. To the extent such section involves the activities of current Government employees and their partners, it is beyond the scope of these regulations.

(b) *Imputation.* Neither the Act nor these regulations impute the restrictions on former employees to partners or associates of such employees. Imputation of the restrictions of sections 207 (b)(ii) and (c) to partners of former employees would be inappropriate for the additional reason that section 207(b)(ii) itself restricts secondary-level activity, and section 207(c) is directed at the exercise of influence personal to the former Senior Employee.

§ 737.23 Officials of a State; officials of corporations created by an Act of Congress and public international organizations.

For purposes of sections 207 (a), (b) and (c) of title 18 U.S.C.:

(a) An official whose powers are established by the constitution of any State of the United States does not act on behalf of "any other person" or "anyone" when acting in his or her official capacity, but rather constitutes the official authority of the State; and

(b) A former employee does not engage in unlawful activity when he or she acts on behalf of (1) a corporation specifically created by an Act of Congress if any of its directors is currently appointed by the United States; or (2) any public international organization if he or she serves by nomination or request of the United States or on temporary assignment from any agency.

§ 737.25 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. 207(d).

(a) *Definitions.* As used in these regulations, "Senior Employee" refers to any person specified in or designated pursuant to 18 U.S.C. 207(d)(1); that is, employed by the United States:

(1) At a rate of pay specified or fixed according to subchapter II of chapter 53 of title 5, U.S.C., generally known as "Executive Level;" or

(2) On active duty as a commissioned officer of a uniformed service in a pay grade of 0-9 or above as described in 37 U.S.C. 201; or

(3) In a position in any pay system for which the basic rate of pay is equal to or greater than that for GS-17 as prescribed by 5 U.S.C. 5332 or positions which are established within the Senior Executive Service (SES) pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay grade 0-7 and 0-8, as described in 37 U.S.C. 201, and who has significant decision-making or supervisory responsibilities, as designated by the Director, pursuant to paragraph (b) of this section.

(b) *Designation procedures.* The following procedures will be followed in designation of Senior Employee positions pursuant to 18 U.S.C. 207(d)(1)(C):

(1) *Positions at GS-17 and 18 level, Senior Executive Service, and pay grades 0-7 and 0-8 of the uniformed services.* The following are designated effective February 28, 1980, unless exempted as provided in paragraph (b)(2) of this section: All positions classified at GS-17 or above in the Gener-

al Schedule; those in any other pay system, the rate of pay for which is at least that of grade GS-17; those in the Senior Executive Service; and those active duty uniformed service officers serving in pay grades 0-7 and 0-8. Each agency head shall submit to the Director, by May 15, 1979 and on every May 15 thereafter, a report consisting of: (i) a description of all positions as set forth in this paragraph; (ii) the agency's recommendation as to those positions that should not be designated, based on standards established in these regulations or any other reason; and (iii) the basis and reasons for each such recommendation. After making such additional inquiries as appear desirable, the Director will determine which positions should be exempt. Notwithstanding the foregoing, the effective date for Executive Level positions, whether or not included in the Senior Executive Service, is July 1, 1979.

(2) *Standards for designation and exemption.* Positions, or classes of positions, which do not have significant decision-making or supervisory responsibility will be exempted from designation. Initial exemptions will be retroactive. Classes of positions which may be considered for exemption are those in which decision-making responsibility does not regularly extend to major policy issues within the agency or in which supervisory responsibility extends to less than all of a directorate, bureau or department which has major policy or operational responsibility. The foregoing may include, without limitation, special assistants, technical and professional advisors to persons who make policy decisions, those involved primarily in research and technical work, and administrative law judges.

(3) *Senior Executive Service.* The establishment of positions within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978 is the responsibility of the Office of Personnel Management. The choice of an individual to enter or not to enter the Senior Executive Service is not a relevant factor in the designation under these regulations of a position held by such person.

(4) *"Rate of pay."* As used in the definition of Senior Employee, the "rate of pay" is that specified by or pursuant to law without regard to the ceiling limitations of section 5308 or section 5373 of title 5 U.S.C.; except that an individual in an executive level or GS-17 or 18 position is deemed to be employed at the rate of pay specified for that position. Increases in pay due to "steps" are not considered in determining pay grade or level.

(c) *Differential designation.* Where appropriate, the Director may designate positions for purposes of 18 U.S.C. 207(c) without designating the positions for purposes of 18 U.S.C. 207(b)(ii).

Example 1: It may be determined that a given position or class of positions will be restricted as to contact in the first post employment year, but not as to assisting in representation.

(d) *Fair notice of designation.* No Senior Employee designation made pursuant to 18 U.S.C. 207(d)(1)(C) will be effective until the last day of the fifth full calendar month after the first publication of a notice by the Director of intention to designate; except as indicated in paragraph (i) of this section, and as to a person first occupying the position after such notice is published. The designation in paragraph (b)(1) of this section and the comparable designation in the interim regulations of April 3, 1979 (44 FR 19974) constitutes notice.

(e) *"Acting" or temporary positions.* An individual may serve in a position designated pursuant to 18 U.S.C. 207(d) for up to 60 days in an "acting" or temporary capacity without being subject to those restrictions which specially apply to such positions, unless such individual (1) was transferred or detailed from another designated position, or (2) without a significant break in continuity, is named permanently to such position.

(f) *Special Government Employee.* A Special Government Employee who serves on 60 days or less in a given calendar year may serve in a designated position without being subject to the restrictions which specially apply to such position. A Special Government Employee is deemed to serve only on those days actually engaged in work for the Government under his or her Special Government Employee arrangement.

(g) *Publication.* Positions designated by the Director pursuant to 18 U.S.C. 207(d)(1)(C) and not exempted will be published in the FEDERAL REGISTER.

(h) *Computation of time.* An individual who transfers from a designated position to one that is not designated shall compute the commencement of the time periods contained in 18 U.S.C. 207 (b)(ii) and (c) from the time of such transfer, except as indicated in paragraph (i) of this section. (See § 737.7(e).)

(i) *Position shifting.* In any case where a person transfers from a designated position to one that is not, the agency head shall within one month transmit to the Director a report reciting the functions of each position, the reason for the transfer, and the identities of the prior holder of the position assumed and the successor, if any, to the position departed. If the Director designates the newly assumed position pursuant to section 207(d)(1)(C) of title 18 U.S.C., such designation shall be effective retroactively to the date of transfer notwithstanding paragraph (d) of this section. 10

(j) *Revocation of Designations.* In the event the Director determines that a position previously designated should not have been, the designation will be revoked. Except for designations made under paragraph (i) of this section, the revocation may be made retroactive if the initial designation is determined to have been erroneous or if there is a change in standards for designation applicable to the position. Retroactive effect will not be given where the basis for revocation is a change in the functions or importance of a position.

§ 737.27 Administrative enforcement proceedings.

(a) *Basic procedures.* The following basic guidelines for administrative enforcement of restrictions on post employment activities are designed to expedite consultation with the Director as required pursuant to section 207(j) of title 18 U.S.C.

(1) *Delegation.* The head of an agency may delegate his or her authority under this subpart.

(2) *Initiation of administrative disciplinary hearing.* (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the agency head shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. The agency should coordinate any investigation on administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Agency that it does not intend to initiate criminal prosecution.

(ii) Whenever an agency has determined after appropriate review that there is reasonable cause to believe that a former Government employee has violated any of these regulations or 18 U.S.C. 207(a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Government employee with notice as defined in paragraph (a)(3) of this section. Agencies may establish procedures to protect the privacy of former employees as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(3) *Adequate notice.* (i) An agency must provide a former Government employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

(ii) Notice to the former Government employee must include:

(A) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Government employee to prepare an adequate defense;

(B) Notification of the right to a hearing; and

(C) An explanation of the method by which a hearing may be requested.

(4) *Presiding official.* (i) The presiding official at proceedings under this subpart shall be the agency head or an individual to whom the agency head has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(ii) Appropriate qualifications shall be established for examiners.

(iii) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(5) *Time, date and place.* (i) The hearing shall be conducted at a reasonable time, date, and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Government employee's need for:

(A) Adequate time to prepare a defense properly, and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel,

(ii) To introduce and examine witnesses and to submit physical evidence,

(iii) To confront and cross-examine adverse witnesses,

(iv) To present oral argument, and

(v) To receive a transcript or recording of the proceedings, on request.

(7) *Burden of proof.* In any hearing under this subpart, the agency has the burden of proof and must establish substantial evidence of a violation.

(8) *Hearing decision.* (i) The presiding official shall make a determination exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the agency, either party may appeal the decision to the agency head. The agency head shall base his or her decision on such appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the agency head modifies or reverses the initial decision, he or she shall specify such findings of fact and conclusions of law as are different from those of the hearing examiner.

(9) *Administrative sanctions.* The agency head may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations may seek judicial review of the administrative determination.

(11) *Consultation and review.* Each agency shall submit a copy of its procedures for administrative enforcement to the Director.

§ 737.29 Effective date of restrictions.

(a) *Persons affected.* Any person who holds a Government position after June 30, 1979, becomes subject to any additional restrictions relating to the holder of that position contained in the amendments to 18 U.S.C. 207 as set forth in these regulations. Restrictions which depend on the designation of a position by the Director shall become applicable on the date such designation becomes effective.

(b) *Fair notice of substantive changes.* No change in the substance of these regulations shall become effective with respect to a Government employee who is adversely affected by such change until and unless such employee remains in a position to which such change is applicable for a period of five months following the first publication of a regulation in final form, reflecting or prescribing such change, or unless such employee accepts such a position after the publication.

§ 737.31 Separate statutory agencies: Designations.

In accordance with the provisions of 18 U.S.C. 207(e) and 737.13, each of the following departments or agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it separate statutory agencies or bureaus as set forth below:

Parent Agency: EXECUTIVE OFFICE OF THE PRESIDENT
Separate Statutory Components
- Office of Management and Budget
- Council of Economic Advisers
- National Security Council
- United States Trade Representation
- Council for Environment Quality
- Office of Science and Technology Policy
- Office of Administration
- White House Office and the Office of Policy
- Development
- Office of the Vice President

Parent Agency: DEPARTMENT OF THE TREASURY
Separate Statutory Components:
- Bureau of Alcohol, Tobacco and Firearms
- Bureau of Engraving and Printing
- Bureau of the Mint
- Comptroller of the Currency
- Internal Revenue Service
- United States Customs Service
- United States Secret Service

Parent Agency: FEDERAL EMERGENCY MANAGEMENT AGENCY
Separate Statutory Components: United States Fire Administration

Parent Agency: OFFICE OF PERSONNEL MANAGEMENT
Separate Statutory Components: Office of Government Ethics

Parent Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES
Separate Statutory Components:
- Food and Drug Administration
- Public Health Service
- Social Security Administration

Parent Agency: DEPARTMENT OF TRANSPORTATION
Separate Statutory Components:
- Federal Aviation Administration
- Federal Highway Administration
- Federal Railroad Administration
- Maritime Commission
- National Highway Traffic Safety Administration
- Saint Lawrence Seaway Development Corporation
- United States Coast Guard
- Urban Mass Transportation Administration

Parent Agency: DEPARTMENT OF LABOR
Separate Statutory Components:
- Bureau of Labor Statistics
- Mine Safety and Health Administration
- Occupational Safety and Health Administration

Parent Agency: DEPARTMENT OF JUSTICE
Separate Statutory Components:
- Bureau of Prisons (including Federal Prison Industries, Inc.)
- Community Relations Service
- Drug Enforcement Administration
- Federal Bureau of Investigation
- Foreign Claims Settlement Commission
- *National Institute of Justice
- *Bureau of Justice Statistics
- *Office of Justice Assistance, Research and Statistics
- Immigration and Naturalization Service
- Independent Counsel
- United States Parole Commission

Parent Agency: DEPARTMENT OF DEFENSE
Separate Statutory Components:
- Department of the Army
- Department of the Navy
- Department of the Air Force
- Defense Mapping Agency

Parent Agency: DEPARTMENT OF ENERGY
Separate Statutory Components:
- Federal Energy Regulatory Commission

Parent Agency: DEPARTMENT OF COMMERCE
Separate Statutory Components:
- Economic Development Administration
- Patent and Trademark Office
- National Oceanic and Atmospheric Administration
- Bureau of the Census

Parent Agency: NATIONAL CREDIT UNION ADMINISTRATION
Separate Statutory Component:
- Central Liquidity Facility

Parent Agency: NATIONAL CREDIT UNION ADMINISTRATION
Separate Statutory Component:
- Central Liquidity Facility

[50 FR 31097, July 31, 1985]

§ 737.32 Separate components of agencies or bureaus; designations.

In accordance with the provisions of 18 U.S.C. 207(d)(1)(C) and § 737.14, each of the component agencies or bureaus as set forth below is determined, for purposes of 18 U.S.C. 207(d) and this Part 737, to be separate from the remaining agencies and bureaus of its

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*These three components shall not, for purposes of 18 U.S.C. 207(c), be considered separate from one another but only from other separate components of the Department of Justice.

parent agency (except such agencies and bureaus as specified):

- Parent Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES
- Separate Components:
  - Health Care Financing Administration
- Parent Agency: DEPARTMENT OF TRANSPORTATION
- Separate Components:
  - Alaska Railroad
- Parent Agency: DEPARTMENT OF LABOR
- Separate Components:
  - Employment and Training Administration
  - Employment Standards Administration
  - Labor-Management Services Administration
- Parent Agency: DEPARTMENT OF DEFENSE
- Separate Components:
  - Defense Communications Agency
  - Defense Intelligence Agency
  - Defense Nuclear Agency
  - National Security Agency
  - Defense Logistics Agency
- Parent Agency: DEPARTMENT OF STATE
- Separate Components:
  - Foreign Service Grievance Board
  - International Joint Commission, United States and Canada (American Section)
- Parent Agency: DEPARTMENT OF JUSTICE
- Separate Statutory Components:
  - Office of the United States Attorney (for each judicial district (95))—however, each such Office is not designated as separate from the Office of the U.S. Marshall for the same judicial district.
  - Office of United States Marshall (for each Judicial district (95))—however, each such Office is not designated as separate from the Office of the U.S. Attorney for the same judicial district.
  - Antitrust Division
  - Civil Rights Division
  - Land and Natural Resources Division
  - Tax Division
  - Criminal Division
  - Office for Improvements in the Administration of Justice
- Parent Agency: DEPARTMENT OF COMMERCE
- Separate Components:
  - International Trade Administration
  - Minority Business Development Administration
  - National Telecommunication and Information Administration
  - Bureau of Industrial Economics

[50 FR 31097, July 31, 1985]

§ 737.33 "Senior Employee" designations.

In accordance with § 737.25(b)(1), the following employee positions have been designated as "Senior Employee" positions for purposes of subsections 207(b)(ii) and (c) of title 18, U.S.C, as amended.[1]

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (OFFICE OF ADMINSTRATION)

Positions:

AD Director, Automated Systems Division

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (COUNCIL OF ECONOMIC ADVISERS)

Positions: No section 207(d)(1)(C) designations.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (COUNCIL ON ENVIRONMENTAL QUALITY)

Positions: No section 207(d)(1)(C) designations.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE)

Positions:

GS-17 Executive Director.

AGENCY: EXECUTIVE OFFICE OF THE PRISIDENT, (OFFICE OF MANAGEMENT AND BUDGET)

Positions:

SES Executive Associate Director for Budget and Legislation
SES Associate Director
SES Counsel to the Director for Policy Analysis and Law
SES General Counsel
SES Deputy General Counsel
SES Assistant Director for Public Affairs
SES Assistant Director for Legislative Affairs (House)
SES Assistant Director for Legislative Affairs (Senate)
SES Associate Director for Economic Policy
SES* Deputy Associate Director for Economic Policy

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[1] All positions designated pursuant to section 207(d)(1)(C) not previously designated are marked by an asterisk (*). Those positions marked by a double asterisk (**) are former Executive level positions which were converted to SES positions. Positions automatically designated by section 207(d)(1)(A) and (B) are not shown.

SES Assistant Director for Legislative Reference
SES Deputy Assistant Director for Legislative Reference
SES* Assistant Director for Special Projects
SES Deputy Associate Director for Administration
SES Assistant Director for Budget Review
SES Deputy Assistant Director for Budget Review
SES Administrator, Office of Information and Regulatory Affairs
SES Deputy Administrator for Information and Regulatory Management
SES Deputy Administrator for Regulatory and Statistical Analysis
SES Associate Director for Management
SES Assistant Director for Federal Personnel Policy
SES Deputy Associate Director for Managment Reform
SES Deputy Associate Director for Finance and Accounting
SES* Deputy Associate Director for Interagency Activities
SES Associate Director for National Security and International Affairs
SES Deputy Associate Director for Special Studies, National Security and International Affairs
SES Deputy Associate Director for National Security
SES Deputy Associate Director for International Affairs
SES Associate Director for Human Resources, Veterans, and Labor
SES Deputy Associate Director for Special Studies, Human Resources, Veterans and Labor
SES Deputy Associate Director for Health and Income Maintenance
SES Deputy Associate Director for Labor, Veterans and Education
SES Associate Director for Natural Resources, Energy and Science
SES Deputy Associate Director for Special Studies, Natural Resources, Energy and Science
SES Deputy Associate Director for Natural Resources
SES Deputy Associate Director for Energy and Science
SES Deputy Chief, Energy & Science Division
SES Associate Director for Economics and Government
SES Deputy Associate Director for Special Studies, Economics and Government
SES Deputy Associate Director for Transportation, Commerce and Housing
SES Deputy Associate Director for Justice, Treasury and Personnel

OFFICE OF FEDERAL PROCUREMENT POLICY

SES Principal Associate Administrator for Procurement

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (NATIONAL SECURITY COUNCIL)

Positions:

GS-18 Special Assistant to the President (7)
SES 2 Senior Staff Member
SES 4 Senior Staff Member (2)
SES 5 Senior Staff Member (2)
ES 5 Senior Staff Member
FSO 1 Senior Staff Member (2)
GS-17 Staff Member (2)
0-8 Military Assistant to the Assistant to the President for National Security Affairs

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (OFFICE OF SCIENCE AND TECHNOLOGY POLICY)

Positions:

SES* Executive Director
SES* Assistant Director for Defense Technology and Systems
SES* Assistant Director for Energy, Natural Resources, and International Affairs
SES* Assistant Director for General Science
SES* Assistant Director for Institutional Relations
SES* Assistant Director for Life Sciences
SES* Assistant Director for Space Science and Technology

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE)

Positions:

SES Assistant U.S. Trade Representative for Administration
SES General Counsel
SES Deputy General Counsel
SES Chief Textile Negotiator (Ambassador)
SES Director, Computer Services
SES Assistant U.S. Trade Representative—Services
SES Deputy Assistant U.S. Trade Representative—Services
SES Assistant U.S. Trade Representative—Industrial
SES Assistant U.S. Trade Representative—Investment Services
SES Deputy Assistant U.S. Trade Representative—Investment Services

SES Assistant U.S. Trade Representative—Agriculture
SES Chairman, TPSC
SES Deputy Assistant U.S. Trade Representative—Agriculture
SES Assistant U.S. Trade Representative—GATT Affairs
SES Assistant U.S. Trade Representative—The Americas
SES Assistant U.S. Trade Representative—Japan
SES Assistant U.S. Trade Representative—East Asia and Pacific
SES Deputy Assistant U.S. Trade Representative—East Asia and Pacific
SES Deputy Assistant U.S. Trade Representative—GATT Affairs

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (OFFICE OF THE VICE PRESIDENT OF THE UNITED STATES)

Positions:

AD Chief of Staff

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (THE WHITE HOUSE OFFICE)

Positions: No section 207(d)(1)(C) designations.

AGENCY: DEPARTMENT OF AGRICULTURE

Positions:

OFFICE OF THE SECRETARY

SES Deputy Assistant Secretary for Administration
SES Executive Assistant to the Secretary
SES Deputy Assistant Secretary for Food and Consumer Services
SES Deputy Assistant Secretary for Natural Resources and Environment (2)
SES Deputy Under Secretary for Small Community and Rural Development
SES Deputy Under Secretary for International Affairs and Commodity Programs
SES Deputy Assistant Secretary for Marketing and Inspection Services
SES Deputy Assistant Secretary for Economics
SES Deputy Assistant Secretary, Science and Education
SES Deputy Assistant Secretary for Governmental and Public Affairs

OFFICE OF THE INSPECTOR GENERAL

SES Deputy Inspector General
SES Assistant Inspector General for Audit
SES Assistant Inspector General for Investigations
SES Assistant Inspector General for Analysis and Evaluation
SES Deputy Assistant Inspector General for Audit
SES Deputy Assistant Inspector General for Investigations
SES Assistant Inspector General for Security and Special Operations

OFFICE OF THE GENERAL COUNSEL

SES Deputy General Counsel

OFFICE OF ADMINISTRATIVE LAW JUDGES

No section 207(d)(1)(C) designations.

OFFICE OF PERSONNEL

SES Director
SES Deputy Director

OFFICE OF EQUAL OPPORTUNITY

SES Director

OFFICE OF FINANCE AND MANAGEMENT

SES Director
SES Deputy Director
SES Director, National Finance Center (NFC)
SES Deputy Director, NFC

OFFICE OF INFORMATION RESOURCES MANAGEMENT

SES Director
SES Deputy Director

OFFICE OF OPERATIONS

SES Director

OFFICE OF BUDGET, AND PROGRAM ANALYSIS

SES Director

WORLD FOOD AND AGRICULTURAL OUTLOOK

SES Chairperson
SES* Deputy Chairperson

ECONOMICS RESEARCH SERVICE

SES Administrator
SES Deputy Administrator, ERS

STATISTICAL REPORTING SERVICE

SES Administrator
SES Deputy Administrator

ECONOMIC MANAGEMENT STAFF

SES Director

ECONOMIC ANALYSIS STAFF

SES Director

AGRICULTURAL COOPERATIVES SERVICE

SES Administrator

RURAL ELECTRIFICATION ADMINISTRATION

SES Deputy Administrator

FARMERS HOME ADMINISTRATION

SES Associate Administrator
SES Deputy Administrator, Financial and Administrative Operations
SES Deputy Administrator Program Operations

AGRICULTURAL RESEARCH SERVICE

SES Deputy Administrator, National Program Staff
SES Associate Deputy Administrator, National Program Staff
SES Deputy Associate Administrator, National Program Staff
SES Deputy Administrator for Administrative Management
SES Administrator, Agricultural Research Service
SES Associate Administrator, Agricultural Research Service

EXTENSION SERVICE

SES Administrator
SES Associate Administrator

COOPERATIVE STATE RESEARCH SERVICE

SES Administrator
SES Associate Administrator

OFFICE OF GRANTS AND PROGRAM SYSTEMS

SES Director, Grants and Program Systems

SOIL CONSERVATION SERVICE

SES Chief
SES Associate Chief
SES Deputy Chief for Administration
SES Deputy Chief for Assessment and Planning
SES Deputy Chief for Technology
SES Deputy Chief for Programs

FOREST SERVICE

SES Chief
SES Associate Chief
SES Deputy Chief for Administration
SES Deputy Chief for Research
SES Associate Deputy Chief for Research (2)
SES Deputy Chief, National Forest System
SES Associate Deputy Chiefs, National Forest System (2)
SES Deputy Chief, State and Private Forestry
SES Associate Deputy Chief, State and Private Forestry
SES Deputy Chief for Programs and Legislation
SES Associate Deputy Chief for Programs and Legislation

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

SES Administrator
SES Associate Administrator
SES Deputy Administrator, State and County Operations
SES Deputy Administrator, Management
SES Deputy Administrator for Program Planning and Development
SES Deputy Administrator, Commodity Operations

FEDERAL CROP INSURANCE CORPORATION

SES Manager
SES Deputy Manager
SES Assistant Manager for Administration
SES Director of Operations

FOREIGN AGRICULTURAL SERVICE

SES Administrator
SES Associate Administrator
SES Associate Administrator and General Sales Manager

OFFICE OF INTERNATIONAL COOPERATION AND DEVELOPMENT ADMINISTRATOR

SES Administrator
SES Associate Administrator

FOOD SAFETY AND INSPECTION SERVICE

SES Administrator
SES Associate Administrator
SES Deputy Administrator, Meat and Poultry Inspection Operations
SES Deputy Administrator, Meat and Poultry Technical Services
SES Deputy Administrator, Administrative Management
SES Deputy Administrator, Science
SES Deputy Administrator, International Programs

FOOD AND NUTRITION SERVICE

SES Administrator
SES Associate Administrator

HUMAN NUTRITION INFORMATION SERVICE

SES Administrator

AGRICULTURAL MARKETING SERVICE

SES Administrator
SES Deputy Administrator for Marketing Program Operations
SES* Deputy Administrator for Commodity Service

SES Assistant to Deputy Administrator, Marketing Program Operations
SES* Associate Deputy Administrator for Compliance

PACKERS AND STOCKYARDS

SES Administrator
SES Deputy Administrator

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

SES Administrator
SES Associate Administrator
SES Deputy Administrator, Veterinary Services
SES Deputy Administrator, Plant Protection and Quarantine
SES Deputy Administrator for Management

FEDERAL GRAIN INSPECTION SERVICE

SES Deputy Administrator, Program Operations

OFFICE OF TRANSPORTATION

SES* Director

AGENCY: DEPARTMENT OF COMMERCE

Positions:

OFFICE OF THE SECRETARY

SES Executive Assistant to the Secretary
SES Special Assistants to the Secretary

Office of the Associate Deputy Secretary

SES Director, Office of Business Liaison
SES Associate Deputy Secretary
SES* Associate Deputy Secretary for Strategic Policy and Planning

Office of Congressional Affairs

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary for Intergovernmental Affairs

Office of Public Affairs

SES Director

Office of General Counsel

SES Deputy General Counsel

Office of Under Secretary for Travel and Tourism

SES Deputy Under Secretary
SES Assistant Secretary for Tourism Marketing

Office of Inspector General

SES Deputy Inspector General

Minority Business Development Agency

SES Director
SES Deputy Director

Office of Assistant Secretary for Administration

SES Deputy Assistant Secretary for Administration
SES Director for Planning, Budget, and Evaluation
SES Director, Office of Budget
SES* Director for Procurement and Federal Assistance

Office of the Under Secretary for Economic Affairs

SES Chief Economist
SES Deputy Assistant Secretary for Automotive Industry Affairs
SES Director, Office of Productivity, Technology and Innovation
SES* Deputy Assistant Secretary for Productivity, Technology, and Innovation
SES Director, Office of Strategic Resources

Bureau of Economic Analysis

SES Director
SES Deputy Director

National Technical Information Service

SES Director
SES Deputy Director

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SES Deputy Assistant Secretary

Office of Planning and Policy Coordination

SES Chief Counsel

Office of Federal Systems and Spectrum Management

SES Associate Administrator
SES Deputy Associate Administrator

Office of Policy Analysis and Development

SES Associate Administrator

Office of Telecommunications Applications

SES Associate Administrator

Institute for Telecommunications Sciences

SES Associate Administrator

BUREAU OF THE CENSUS

SES Deputy Director

Demographic Fields

SES Associate Director

Management Services

SES Associate Director

Statistical Standards and Methodology

SES Associate Director

Field Operations

SES Associate Director

Economic Fields

SES Associate Director

ECONOMIC DEVELOPMENT ADMINISTRATION

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary, Finance Directorate
SES Deputy Assistant Secretary, Operations Directorate

Office of Chief Counsel

SES Chief Counsel

INTERNATIONAL TRADE ADMINISTRATION

SES Deputy Under Secretary
SES Deputy Assistant Secretary for Commercial Services

Office of the Assistant Secretary for International Economic Policy

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary for Europe
SEC Deputy Assistant Secretary for Western Hemisphere
SES Deputy Assistant Secretary for East Asia
SES Deputy Assistant Secretary for Africa, Near East, South Asia

Office of the Assistant Secretary for Trade Administration

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary for Import Administration
SES Deputy to the Deputy for Import Administration (2)
SES Deputy Assistant Secretary for Export Administration
SES Deputy to the Deputy for Export Administration
SES Deputy Assistant Secretary for Export Enforcement

Office of the Assistant Secretary for Trade Development

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary for Export Development
SES Deputy Assistant Secretary for Industry Projects
SES* Deputy to the Deputy Assistant Secretary for Industry Projects
SES* Deputy Assistant Secretary for Aerospace
SES Deputy Assistant Secretary for Trade Information and Analysis
SES Deputy Assistant Secretary for Trade Adjustment Assistance
SES* Director, Office of World Fairs and International Expositions

NATIONAL BUREAU OF STANDARDS

SES Deputy Director

Office of Associate Director for Programs, Budget and Finance

SES Associate Director for Programs, Budget and Finance
SES Director, Planning Office

National Measurement Laboratory

SES Director
SES Deputy Director for Resources and Operations
SES Deputy Director for Programs

National Engineering Laboratory

SES Director
SES Deputy Director
SES Deputy Director for Programs

Institute for Computer Sciences and Technology

SES Director
SES* Deputy Director

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Office of the General Counsel

SES General Counsel

Office of Policy and Planning

SES Director

National Marine Fisheries Service

SES Assistant Administrator for Fisheries
SES Deputy Assistant Administrator for Fisheries
SES* Deputy Assistant Administrator for Fisheries Resource Management
SES* Deputy Assistant Administrator for Science and Technology

Office of Oceanic and Atmospheric Research

SES Assistant Administrator for Oceanic and Atmospheric Research
SES Deputy Assistant Administrator

National Weather Service

SES Assistant Administrator for Weather Services
SES Deputy Assistant Administrator

National Ocean Service

SES Assistant Administrator for Ocean Services and Coastal Zone Management
SES Deputy Assistant Administrator for Ocean Services

National Environmental Satellite Data and Information Service

SES Assistant Administrator
SES Deputy Assistant Administrator for Satellites
SES Deputy Assistant Administrator for Information Services

NOAA CORPS

07-08 Director

PATENT AND TRADEMARK OFFICE

GS-18 Deputy Assistant Secretary and Deputy Commissioner

Office of Assistant Commissioner for Patents

GS-18 Assistant Commissioner
SES Deputy Assistant Commissioner

Office of Assistant Commissioner for Trademarks

GS-17 Assistant Commissioner

Office of Assistant Commissioner for External Affairs

SES Assistant Commissioner

Office of Assistant Commissioner for Finance and Planning

SES Assistant Commissioner

Office of Assistant Commissioner for Administration

SES* Assistant Commissioner

Office of the Solicitor

SES Solicitor
SES Deputy Solicitor

AGENCY: DEPARTMENT OF DEFENSE

Positions:

Office of the Secretary of Defense

SES Assistant to the Secretary of Defense (Intelligence Oversight)
SES Assistant to the Secretary and Deputy Secretary of Defense
SES Director, Small and Disadvantaged Business Utilization
SES Director of Small Business and Economic Utilization Policy
SES* Director, Disadvantaged Business Utilization

Office of the Deputy Under Secretary of Defense (Policy)

SES Deputy Under Secretary of Defense (Policy)
SES Assistant Deputy Under Secretary of Defense (Policy)
SES Director, Counterintelligence & Security Programs
SES Director, Information Security
SES Director for Security Plans and Programs
SES Director, Counterintelligence and Investigative Programs
SES Director, Special Advisory Staff
SES Director, Command and Control Policy
0-8* Director, Intelligence and Space Policy
SES* Director, Public Diplomacy

Office of the Assistant Secretary of Defense (International Security Policy)

SES Principal Deputy Assistant Secretary of Defense (International Security Policy)
SES* Deputy Assistant Secretary of Defense (Negotiations Policy)
SES* Director, Strategic Forces Policy
SES Deputy Assistant Secretary of Defense (Strategic and Theater Nulear Forces Policy)
SES Director for Theater Nuclear Policy
SES Director, Strategic Arms Control Policy
SES Deputy Assistant Secretary of Defense (European and NATO Affairs)
SES Director, Southern European Affairs
SES Deputy Director, European and NATO Affairs
SES Director, European Policy
SES Deputy Assistant Secretary of Defense (International Economics, Trade, and Security Policy)
SES Principal Director, International Economics, Trade and Security Policy
0-7* Principal Director, European and NATO Policy

Office of the Assistant Secretary of Defense (International Security Affairs)

SES Principal Deputy Assistant Secretary of Defense (International Security Affairs)
SES Deputy Assistant Secretary of Defense (East Asia and Pacific Affairs)
SES Director, Africa Region
SES Deputy Assistant Secretary of Defense (Inter-American Affairs)
SES Deputy Assistant Secretary of Defense (Policy Analysis)
SES Director, Policy Planning

SES Director, Foreign Military Rights Affairs
SES Director, Security Assistance Plans
0-8* Deputy Assistant Secretary of Defense (Near Eastern, African, and South Asian Affairs)
0-8 Director, Inter-American Region
0-7 Director, East Asia & Pacific Region

Defense Security Assistance Agency

SES Deputy Director, Defense Security Assistance Agency
SES Director, Security Assistance Operations
SES Comptroller, Defense Security Assistance Agency
SES Deputy Comptroller, Defense Security Assistance Agency
SES Director, Joint Financial Management Office

Office of the Under Secretary of Defense (Research and Engineering)

SES Principal Deputy Under Secretary of Defense for Research and Engineering
SES Chairman, Military Liaison Committee/Assistant to the Secretary of Defense (Atomic Energy)
SES Deputy Assistant to the Secretary of Defense (Chemical Matters)
SES* Assistant Under Secretary of Defense (Plans and Development)
SES Assistant Under Secretary of Defense Conventional Initiatives and Director, Conventional Initiatives Program Coordination
SES Deputy Under Secretary of Defense (Acquisition Management)
SES Assistant Deputy Under Secretary of Defense (Acquisition)
SES Director, Contract Administration
SES Director, Contract Policy
SES Director, Cost, Pricing and Finance
SES* Deputy Director Policy, Resources, and External Affairs (OT&E)
SES* Assistant Deputy Director, Tactical and Electronic Warfare Systems (OT&E)
SES* Assistant Deputy Director, Strategic, Space and C31 Systems (OT&E)
SES* Director, Industrial Productivity
SES* Director, Industrial Resources
SES Director, Defense Acquisition Regulatory System
SES* Assistant Deputy Under Secretary of Defense (Technology Programs)
SES Director, Major Systems Acquisition
SES Assistant Deputy Under Secretary of Defense (Production Policy)
SES Director, Standardization and Acquisition Support
SES Deputy Under Secretary of Defense (Research and Advanced Technology)
SES Assistant Deputy Under Secretary of Defense (Research & Advanced Technology)
SES Director, Very High Speed Integrated Circuits and Electron Devices
SES Director, Engineering Technology
SES Director, Directed Energy Programs
SES Director, Research and Technical Information
SES Deputy Under Secretary of Defense (Strategic and Theater Nuclear Forces)
SES Deputy Under Secretary of Defense (Tactical Warfare Programs)
SES Director, Mobility and Special Projects
SES* Director, Computer Software and Systems
SES* Assistant Deputy Under Secretary of Defense (Defensive Systems)
SES* Assistant Deputy Under Secretary of Defense (Offensive and Space Systems)
SES* Assistant Deputy Under Secretary of Defense (Strategic Aeronautical and Theater Nuclear Systems)
SES* Assistant Deputy Under Secretary of Defense (START and Arms Control Office)
SES Director, Defense Test and Evaluation
SES Deputy Under Secretary of Defense (International Programs and Technology)
SES Assistant Deputy Under Secretary of Defense (International Programs)
SES Director, NATO Affairs
SES Director, Far East and Southern Hemisphere Affairs
SES Deputy Under Secretary of Defense (C3I)
SES Assistant Deputy Under Secretary of Defense (Communications, Command, and Control)
SES Director, Strategic and Theater Nuclear Forces C3
SES Director, Theater and Tactical C3
SES Director, Electronic Warfare and C3 Countermeasures
SES Director, Information Systems
SES Assistant Deputy Under Secretary of Defense (Intelligence)
SES Director, National Intelligence Systems
SES Director, Office of Munitions
SES Director, Tactical Intelligence Systems
SES Assistant Deputy Under Secretary of Defense (Systems Integration)
SES Director, Systems Architecture and Analysis
SES Director, Long-Range Planning and Systems Evaluation
SES Director, C3 Resources Management
0-7* Deputy Director (Defense Test and Evaluation) and Deputy Director Tactical Air and Land Warfare Systems
0-8 Deputy and Assistant for Directed Energy Weapons
SES Assistant Deputy Under Secretary of Defense (Land Warfare)
SES Assistant Deputy Under Secretary of Defense (Naval Warfare and Mobility)

0-7* Assistant Deputy Under Secretary of Defense (Strategic and Theater Nuclear Forces)
SES Assistant Deputy Under Secretary of Defense (Air Warfare)
SES Director, Joint Tactical Communications Office (TRI-TAC), Ft. Monmouth, NJ

Defense Advanced Research Projects Agency

SES Director, Defense Advanced Research Projects Agency
SES Deputy Director for Research
SES Deputy Director for Technology
SES Director, Directed Energy Office
SES Director, Information Processing Techniques Office
SES* Principal Research Manager (IPTO)
SES Director, Tactical Technology Office
SES Director, Program Management Office
SES* Director, International Command and Control
SES Director, Defense Sciences Office
SES Director, Strategic Technology Office

Office of The Assistant Secretary of Defense (Manpower, Installations, and Logistics)

SES Principal Deputy Assistant Secretary of Defense (Manpower, Installations, and Logistics)
SES Deputy Assistant Secretary of Defense (Equal Opportunity and Safety Policy)
SES Director for Civilian Equal Opportunity Programs
SES* Director, Communications and Community Liaison
SES Director for Safety and Occupational Health Policy
SES Deputy Assistant Secretary of Defense (Logistics & Materiel Management)
SES Principal Director, Office of the Deputy Assistant Secretary of Defense (Logistics and Materiel Management)
SES Director for Supply Management Policy
SES* Deputy Director, Office of Economic Adjustment
SES* Deputy Assistant Director for Mobilization Planning
SES Director for Maintenance Policy
SES* Assistant Director for Resource Management
SES Director, Weapon Support
SES Deputy Assistant Secretary of Defense (Civilian Personnel Policy and Requirements)
SES Director, Personnel Management
SES Director, Civilian Requirements and Analysis
SES Director, Overseas and Nonappropriated Fund Personnel Management
SES Deputy Director for Labor-Management Relations
SES Director, Management Studies
SES Deputy Assistant Secretary of Defense (Program Integration)
SES Principal Director, Office of the Deputy Assistant Secretary of Defense (Program Integration)
SES Director, Automated Systems
SES Director, Force Readiness and Sustainability Requirements and Analysis
SES Director, International Logistics
SES* Director, Energy and Transportation Policy
SES Director, Manpower Management
SES Deputy Assistant Secretary of Defense (Program Management)
SES Principal Director, Office of the Deputy Assistant Secretary of Defense (Facilities, Environment, and Economic Adjustment)
SES Director, Base Operations
SES Director, Facility Requirements and Resources
SES Director, NATO Programs and Foreign Construction
SES* Director, Logistics Planning and Analysis
SES Assistant Director for Installations Programs
SES Director, Installation Planning
SES Director, Office of Economic Adjustment
SES Director, Manpower Planning and Analysis
SES Director, Accession Policy
0-8 Military Executive Officer, Reserve Forces Policy Board
0-7 Director, Construction Operations & Facilities Management
0-8 Staff Director, 5'TH QRMC

DOD Dependents Schools

SES Director, DOD Dependents Schools

Office of Economic Adjustment

SES Economic Advisor

Office of the Assistant Secretary of Defense (Legislative Affairs)

SES Deputy Assistant Secretary of Defense (Senate Affairs)
SES Deputy Assistant Secretary of Defense (House Affairs)

Office of the Assistant Secretary of Defense (Comptroller)

SES Principal Deputy Assistant Secretary of Defense (Comptroller)
SES Deputy Assistant Secretary of Defense (Management Systems)
SES Principal Assistant to the Deputy Assistant Secretary of Defense (Management Systems)
SES Director for Accounting Policy
SES Director for Cost Accounting Policy
SES Director, Financial Accounting Policy

SES Director, Policy Promulgation Division
SES Director for Information Resources Management Systems
SES Director for Banking, International Finance and Professional Development
SES Deputy Assistant Secretary of Defense (Cost and Audit)
SES Director for Acquisition and Cost Management
SES Deputy Comptroller for Audit Policy
SES Deputy Assistant Secretary of Defense (Administration)/Director, Washington Headquarters Services
SES Director for Organizational and Management Planning
SES Deputy Assistant Secretary of Defense (Program/Budget)
SES Deputy Comptroller (Program/Budget)
SES Director for Research and Development
SES Director for Construction
SES Director for Operations
SES Director for Procurement
SES Director for Military Personnel
SES Director for Program and Financial Control
SES* Director for Planning, Review, and Analysis
SES* Director for Management Improvement
SES* Director for Plans and Systems

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS)

SES* Deputy Assistant Secretary of Defense (Health Promotion)
SES Deputy Assistant Secretary of Defense (Information Systems and Strategic Planning)
SES Deputy Assistant Secretary of Defense (Health Program Evaluation)
SES Director, Office of the Civilian Health and Medical Program of the Uniformed Services
0-7* Deputy Assistant Secretary of Defense (Medical Readiness)

OFFICE OF THE DIRECTOR, PROGRAM ANALYSIS AND EVALUATION

SES Director, Program Analysis and Evaluation
SES Director, European Forces Division
SES* Director, Projection Forces and Analytical Support Division
SES Deputy Director (Strategic Programs)
SES Director, Strategic Defensive and Theater Nuclear Forces Division
SES Director, Strategic Offensive Forces Division
SES Deputy Director (General Purpose Programs)
SES Director, Tactical Air Division
SES Director, Land Forces Division
SES Director, Naval Forces Division
SES Deputy Director (Resource Analysis)
SES Director, Economic Analysis Division
SES Director, Cost Analysis Division
SES* Principal Deputy Director, Program Analysis and Evaluation
SES Director, Contingency Forces Division
SES Deputy Director (Theater Assessments and Planning)

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (PUBLIC AFFAIRS)

SES Principal Deputy Assistant Secretary of Defense (Public Affairs)
SES Director, Freedom of Information and Security Review
SES Director, Defense Audio-Visual Agency
SES Director, American Forces Information Service

OFFICE OF THE GENERAL COUNSEL

SES Deputy General Counsel

OFFICE OF THE INSPECTOR GENERAL

SES* Deputy Inspector General

US MISSION TO THE NORTH ATLANTIC TREATY ORGANIZATION

SES Defense Advisor, US Mission to NATO
SES Deputy Defense Advisor for Research, Engineering and Acquisition
SES Director, Defense Plans Division
SES Director, Infrastructure and Logistics Division
SES Director, Communications and Electronic Division

INTERNATIONAL MILITARY ACTIVITIES STAFF

SES Director of Logistics (International Staff)
SES Director of Logistics (NAMSA)
SES Director of Finance, Central European Operating Agency (NATO Support Group)
SES Director, Nuclear Planning (International Staff)

ORGANIZATION OF THE JOINT CHIEFS OF STAFF

SES* Deputy Joint Requirements Integration Manager
0-8* Vice Director, Joint Staff
0-8* Deputy Director, Logistics (Strategic Mobility)
0-7* Deputy Director, Logistics (Planning and Resources)
0-8* Vice Director, Plans and Policy Director
0-7* Deputy U.S. Commissioner, US-Soviet Standing Consultative Commission
0-8* Deputy Director, Force Development and Strategic Plans
0-8* Assistant Deputy Director, Force Development and Strategic Plans

0-7* Deputy Director, Politico-Military Affairs

0-7* Assistant Deputy Director, Politico-Military Affairs

0-7* Deputy Director, International Negotiations

0-7* Assistant Deputy Director, International Negotiations

0-7* Joint Chiefs of Staff Representative for Intermediate Range Nuclear Forces

0-8* Joint Chiefs of Staff Representative for START

0-8* Deputy Director, Unified and Specified Command C3 Support

0-7* Deputy Director, Defense-wide Command, Control, and Communications Connectivity and Evaluation

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (RESERVE AFFAIRS)

SES Principal Director, Office of the Deputy Assistant Secretary of Defense (Reserve Affairs)

AGENCY: DEPARTMENT OF THE AIR FORCE

Positions:

Civilian

OFFICE OF THE SECRETARY OF THE AIR FORCE

UNDER SECRETARY OF THE AIR FORCE

SES Deputy Under Secretary of the Air Force (Space Systems)

ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT)

SES Principal Deputy Assistant Secretary of the Air Force (Financial Management)

SES Deputy Assistant Secretary, Programs and Budget

SES Deputy Assistant Secretary for Information Systems Management

SES Deputy for Aerospace Economic Analysis

SES The Auditor General

ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER, RESERVE AFFAIRS AND INSTALLATIONS)

SES Principal Deputy Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations)

SES Deputy Assistant Secretary (Installations, Environment and Safety)

SES Deputy Assistant Secretary (Manpower Resources and Military Personnel)

SES Deputy Assistant Secretary (Reserve Affairs)

ASSISTANT SECRETARY OF THE AIR FORCE (RESEARCH, DEVELOPMENT AND LOGISTICS)

SES Principal Deputy Assistant Secretary of the Air Force (Research, Development and Logistics)

SES Deputy Assistant Secretary (Logistics and Communications)

SES Deputy Assistant Secretary (Acquisitions Management)

SES Deputy for Acquisition

SES Deputy for Programs and Production

SES Deputy for Supply and Maintenance

SES Deputy for Transportation and Civil Aviation

ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE AIR FORCE

SES Administrative Assistant to the Secretary of the Air Force

GENERAL COUNSEL

SES The General Counsel

SES Deputy General Counsel

SES Assistant General Counsel, Procurement

DIRECTORATE OF ADMINISTRATION

SES Chief, Publishing Division

COMPTROLLER OF THE AIR FORCE

SES Deputy Comptroller of the Air Force

SES Deputy Director, Budget

SES Chief, Budget Management Division

SES Deputy Director, Air Force Accounting and Finance Center

DEPUTY CHIEF OF STAFF, LOGISTICS AND ENGINEERING

SES Associate Director, Engineering and Services

SES Associate Director, Logistics Plans and Programs

SES Deputy to the Commander, Air Force Commissary Service

DEPUTY CHIEF OF STAFF, MANPOWER AND PERSONNEL

SES Deputy Assistant Secretary (Civilian Personnel Policy and Equal Employment Opportunity); and Director of Civilian Personnel

DEPUTY CHIEF OF STAFF, RESEARCH, DEVELOPMENT AND ACQUISITION

SES Director, Office of Small and Disadvantaged Business Utilization

SES Associate Director, Contracting and Manufacturing

AIR FORCE LOGISTICS COMMAND

SES Chairperson, Air Force Logistics Command Procurement Committee

SES Assistant Deputy Chief of Staff, Logistics Management Systems
SES Assistant Deputy Chief of Staff, Materiel Management
SES Assistant Deputy Chief of Staff, Maintenance
SES Assistant Deputy Chief of Staff, Plans and Programs
SES* Deputy for Logistics Force Structure, Development and Acquisition, Air Force Acquisition Logistics Center
SES Assistant Deputy Chief of Staff, Contracting and Manufacturing
SES Deputy for Contracting and Manufacturing, Air Force Acquisition Logistics Center
SES Deputy Director, Materiel Management, Ogden Air Logistics Center
SES Deputy Director, Materiel Management, Oklahoma City Air Logistics Center
SES Deputy Director, Materiel Management, Sacramento Air Logistics Center
SES Deputy Director, Materiel Management, San Antonio Air Logistics Center
SES Deputy Director, Materiel Management, Warner Robins Air Logistics Center

AIR FORCE SYSTEMS COMMAND (AFSC)

Headquarters AFSC

SES Principal Assistant Deputy Chief of Staff, Contracting and Manufacturing
SES Chairperson, Contract Review Committee
SES Director of Manufacturing

Air Force Office of Scientific Research

SES Director, Aerospace Sciences
SES Director, Chemical Sciences
SES Director, Electronics and Materiel Sciences
SES Director, Life Sciences
SES Director, Mathematical and Information Sciences

Aeronautical Systems Division

SES Assistant Deputy for Procurement and Manufacturing
SES Deputy for Reconnaissance and Electronic Warfare Systems

Air Force Wright Aeronautical Laboratories

Air Force Materials Laboratory

SES Research and Development Executive (Director, AFML)
SES Director, Manufacturing Technology Division

Electronic Systems Division

SES Assistant Deputy for Contracting and Manufacturing
SES Assistant Deputy for Strategic Systems
SES Assistant Deputy for Tactical Systems
SES Deputy (Technical Operations and Product Assurance)

Space division

SES Assistant Deputy for Contracting and Manufacturing

ORGANIZATION OF THE JOINT CHIEFS OF STAFF

Joint Program Management Office, Worldwide Military Command and Control System (WWMCCS) Information Systems

SES Chief, WWMCCS Information Systems Office
SES Technical director

NATIONAL SECURITY COUNCIL

SES* Director, Crisis Management Planning Staff

Military

OFFICE OF THE SECRETARY OF THE AIR FORCE

0-7/0-8 Commander, Air Force Audit Agency; and Deputy Auditor General
0-7/0-8 Director, Office of Space Systems
0-7/0-8 Director of Special Projects; and Assistant Vice Commander, Space Division (AFSC)

OFFICE OF AIR FORCE RESERVE

0-7/0-8 Chief of Air Force Reserve; and Commander, Air Force Reserve

NATIONAL GUARD BUREAU

0-7/0-8 Director, Air National Guard

ASSISTANT CHIEF OF STAFF, INFORMATION SYSTEMS

0-7/0-8 Assistant Chief of Staff, Information Systems
0-7/0-8* Deputy Assistant Chief of Staff, Information Systems

ASSISTANT CHIEF OF STAFF, STUDIES AND ANALYSES

0-7/0-8 Assistant Chief of Staff, Studies and Analyses

OFFICE OF THE JUDGE ADVOCATE GENERAL

0-7/0-8 The Judge Advocate General; and Commander, Air Force Legal Services Center
0-7/0-8 Deputy Judge Advocate General

THE INSPECTOR GENERAL

0-7/0-8 Commander, Air Force Office of Special Investigations

COMPTROLLER OF THE AIR FORCE

0-7/0-8 Director, Budget

0-7/0-8 Deputy Director, Budget (Operations)

0-7/0-8 Commander, Air Force Accounting and Finance Center; Assistant Comptroller for Accounting and Finance; and Assistant Director, Security Assistance Accounting, Defense Security Assistance Agency

DEPUTY CHIEF OF STAFF, LOGISTICS AND ENGINEERING

0-7/0-8 Director, Logistics Plans and Programs

0-7/0-8 Deputy Director, Logistics Plans and Programs

0-7/0-8 Director, Engineering and Services

0-7/0-8 Director, Transportation

0-7/0-8 Commander, Air Force Commissary Service

DEPUTY CHIEF OF STAFF, PROGRAMS AND RESOURCES

0-7/0-8 Assistant Deputy Chief of Staff, Programs and Resources

0-7/0-8 Director, Programs and Evaluation

0-7/0-8 Director, International Programs

DEPUTY CHIEF OF STAFF, RESEARCH, DEVELOPMENT AND ACQUISITION

0-7/0-8 Assistant Deputy Chief of Staff, Research, Development and Acquisition

0-7/0-8 Director, Space Systems and Command, Control, Communications

0-7/0-8 Director, Contracting and Manufacturing Policy

0-7/0-8 Director, Development and Production

0-7/0-8* Deputy for Strategic Forces

0-7/0-8 Special Assistant for ICBM Modernization

0-7/0-8* Special Assistant for Tactical Modernization

0-7/0-8 Joint Program Manager, Worldwide Military Command and Control System (WWMCCS) Information Systems; and Assistant for WWMCCS Information Systems

DEPUTY CHIEF OF STAFF, PLANS AND OPERATIONS

0-7/0-8 Director, Plans

AIR FORCE COMMUNICATIONS COMMAND

0-7/0-8 Commander, Air Force Communications Command

AIR FORCE LOGISTIC COMMAND

0-7/0-8 Chief of Staff

0-7/0-8 Deputy Chief of Staff, Contracting and Manufacturing

0-7/0-8 Deputy Chief of Staff, Logistics

0-7/0-8 Deputy Chief of Staff, Maintenance

0-7/0-8 Deputy Chief of Staff, Plans and Programs

0-7/0-8 Staff Judge Advocate

0-8/0-9 Commander, Air Force Acquisition Logistics Center

0-7/0-8 Commander, Air Force Logistics Command International Logistics Center; and Assistant for International Logistics

0-7/0-8* Commander, Air Force Logistics Command Logistics Management Systems Center; & Deputy Chief of Staff, Logistics Management Systems

0-7/0-8 Commander, Ogden Air Logistics Center

0-7/0-8 Commander, Oklahoma City Air Logistics Center

0-7/0-8 Commander, Sacramento Air Logistics Center

0-7/0-8 Commander, San Antonio Air Logistics Center

0-7/0-8 Commander, Warner Robins Air Logistics Center

AIR FORCE SYSTEMS COMMAND

0-7/0-8 Deputy Chief of Staff, Contracting and Manufacturing

0-7/0-8 Deputy Chief of Staff, Systems

0-7/0-8 Deputy Chief of Staff, Test and Evaluation

0-7/0-8 Deputy Chief of Staff, Acquisition Logistics

0-7/0-8 Director, Laboratories

0-7/0-8 Staff Judge Advocate

0-7/0-8 Vice Commander, Aeronautical Systems Division (ASD)

0-7/0-8 Deputy for Airlift and Trainer Systems; and C-17 System Program Director, ASD

0-7/0-8 Deputy for B-1B, ASD

0-7/0-8 Deputy for F-16, ASD

0-7/0-8 Vice Commander, Electronic Systems Division (ESD)

0-7/0-8 Deputy for Airborne Warning and Control Systems, ESD

0-7/0-8 Deputy for Strategic Systems, ESD

0-7/0-8 Vice Commander, Space Division

0-7/0-8 Deputy for Space Launch and Control Systems; and System Program Director, Space Transportation System (Space Shuttle), Space Division

0-7/0-8 Commander, Armament Division

0-7/0-8* Vice Commander, Armament Division

0-7/0-8 Deputy Commander, Development and Acquisition, Armament Division

0-7/0-8 Commander, Air Force Contract Management Division

0-7/0-8 Commander, Ballistic Missile Office; and Program Director for Peacekeeper

0-7/0-8* Program Manager, Small Missile Systems Program Office

SPACE COMMAND

0-7/0-8* Deputy Chief of Staff, Systems Integration

ARMY AND AIR FORCE EXCHANGE SERVICE

0-7/0-8 Commander, Army and Air Force Exchange Service

MILITARY TRAFFIC MANAGEMENT COMMAND

0-7/0-8 Vice Commander, Military Traffic Management Command

AGENCY: DEPARTMENT OF THE ARMY

Positions:

OFFICE, SECRETARY OF THE ARMY

SES Administrative Assistant to the Secretary of the Army
SES Deputy Administrative Assistant
SES* Special Assistant to the Assistant Secretary of the Army (RDA)

OFFICE OF THE GENERAL COUNSEL

SES General Counsel
SES Principal Deputy General Counsel and Chief of Legal Services

OFFICE OF THE UNDER SECRETARY

SES Deputy Under Secretary of the Army
SES Deputy Under Secretary of the Army (Operations Res)

OFFICE, ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS & FINANCIAL MANAGEMENT)

SES Principal Deputy ASA (FM)
SES Principal Deputy ASA (IL)
SES Deputy for Installations & Housing
SES Deputy for Logistics
SES Deputy for Cost Analysis
SES Deputy for Financial Systems
SES Deputy for Resource Analysis
SES Deputy for Information Resource Management
SES Assistant Deputy for Resource Analysis
SES Deputy for Environmental Safety & Occupational Health

OFFICE, ASSISTANT SECRETARY OF THE ARMY (MANPOWER & RESERVE AFFAIRS)

SES Principal Deputy ASA (MRA)
SES* Deputy Assistant Secretary of the Army (Review Boards & Personnel Security)
SES* Deputy Assistant Secretary of the Army (Readiness, Force Management & Training)

OFFICE, SMALL & DISADVANTAGED BUSINESS UTILIZATION

SES Director, Small & Disadvantaged Business Utilization

OFFICE, ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

SES Principal Deputy ASA (CW)
SES Deputy for Program Planning, Review and Evaluation (CW)
SES Deputy for Management and Budget (CW)
SES* Deputy for Policy, Planning & Legislative Affairs (CW)

OFFICE, ASSISTANT SECRETARY OF THE ARMY (RESEARCH, DEVELOPMENT & ACQUISITION)

SES Principal Deputy ASA (RDA) and Deputy ASA (R&D)
SES Deputy ASA (Acquisition)
SES Deputy for Science & Technology
SES Deputy for Materiel Acquisition Management
SES Deputy for Procurement Policy
SES Deputy for Management & Programs
SES Assistant Deputy for Management & Programs
SES Deputy for Air & Missile Defense
SES Deputy for Communications & Target Acquisition
SES Director Acquisition Management & Review Agency

DEFENSE SUPPLY SERVICE—WASHINGTON

SES Director, Defense Supply Service—Washington

OFFICE OF THE CHIEF OF STAFF

BALLISTIC MISSILE DEFENSE PROGRAM OFFICE (WASHINGTON)

SES Deputy BMD Program Manager
SES Director, Technology Directorate
SES Chief, Scientist
SES Director, Programs & Systems Analysis Directorate

BALLISTIC MISSILE DEFENSE SYSTEMS COMMAND (HUNTSVILLE)

SES Chief, Contracts Office
SES Director, Systems Technology Project Office
SES* Director, Sentry Project Office

BALLISTIC MISSILE DEFENSE ADVANCE TECHNOLOGY CENTER (HUNTSVILLE)

SES Director, BMD Advance Technical Center
SES Director, Study Program Management Office

US ARMY OPERATIONAL TEST AND EVALUATION AGENCY (OCSA)

SES Scientific Advisor

DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS

SES Deputy Assistant Chief of Staff for Auto & Commo
SES Director, USA Management Systems Spt Agency
SES* Director, US Army Center for Military History
SES Director, US Army Computer Systems Selection Acquisition Agency

US ARMY CONCEPTS ANALYSIS AGENCY

SES Director

DEPUTY CHIEF OF STAFF FOR LOGISTICS

SES Special Assistant to the DCSLOG/Chief Aviation Logistics
SES* Assistant Director for Energy & Troop Support
SES* Assistant Director for Trasnsportation

PROGRAM ANALYSIS AND EVALUATION DIRECTORATE (OCSA)

SES Deputy Director, Program Analysis Evaluation

COMPTROLLER OF THE ARMY

SES Deputy Comptroller
SES* Director, Resource Management
SES* Assistant Comptroller for Economic Policy

ARMY AUDIT AGENCY (OSA)

SES The Auditor General (OCSA)
SES Deputy Auditor General (OSA)
SES Director, Personnel and Force Management Audits (OSA)
SES Director, Audit Policy, Plans, & Resources (OSA)
SES Director, Logistical and Financial Audits (OSA)
SES Director, Acquisition and Systems Audits (OSA)
SES* Regional Auditor General (European Region)

OFFICE OF THE JUDGE ADVOCATE GENERAL

SES Special Assistant for Comm, Trans & Utilities

U.S. ARMY MATERIEL DEVELOPMENT & READINESS COMMAND (DARCOM) HEADQUARTERS

SES Deputy Comptroller
SES Command Counsel
SES Deputy Command Counsel
SES Chief, Patent Law Division
SES Director, Management Information Systems
SES Director of Product Assurance and Test
SES Principal Assistant Deputy for Research, Development and Acquisition
SES Assistant Deputy for Resources and Management
SES Assistant Deputy for Science & Technology
SES Assistant Deputy for International Research, Development and Standardization
SES Director of Program Analysis and Evaluation
SES Director of Manufacturing Technology
SES Deputy Director of Development Engineering and Acquisition
SES Deputy for Weapon Systems Management
SES Assistant Deputy for Materiel Readiness
SES Deputy Director of Supply, Maintenance and Transportation
SES Chief, Procurement Policy and Analysis Division
SES Deputy Director of Security Assistance
SES Deputy Director of Procurement & Production
SES Deputy Director, Product Assurance & Test
SES Deputy Executive Director, TMDE

NUCLEAR MUNITIONS PROJECT OFFICE

SES Deputy Project Manager

PROJECT OFFICE (PATRIOT)

SES Deputy Project Manager

US ARMY MATERIEL SYSTEMS ANALYSIS AGENCY (AMSAA)

SES Director, Army Materiel Systems Analysis Agency

U.S. ARMY MATERIELS AND MECHANICS RESEARCH CENTER (AMMRC)

SES Director

ARMY RESEARCH OFFICE (ARO) DURHAM

SES Director
SES Technical Director
SES Director, Electronics Division
SES Director, Metallurgy & Materiels Science
SES Director, Physics Division
SES Director, Mathematics Division
SES Director, Engineering Sciences Division
SES Director, Chemical & Biological Sciences Division

US ARMY ARMAMENT MATERIEL READINESS COMMAND (ARRCOM)

SES Deputy for Procurement and Production
SES Chief Counsel

US Army Armament Research & Development Command (ARRADCOM) Headquarters

SES Technical Director
SES Chief Counsel
SES Director, Product Assurance

Ballistic Research Laboratory

SES Director, Ballistic Research Laboratory

Chemical Systems Lab

SES Deputy Director

Large Caliber Weapon Systems Laboratory

SES Deputy Director

Fire Control & Small Caliber Weapon Systems Lab

SES Deputy Director

US Army Aviation Systems Command (AVSCOM)

SES Technical Director
SES Director, Aeromechanics Lab
SES Director of Procurement and Production
SES Director, Structures Lab
SES Director, Propulsion Lab
SES Director, Research & Technology Lab

US Army Communication—Electronics Command (CECOM)

SES Chief Counsel
SES Technical Director
SES Director, Product Assurance and Test
SES Director, Communications System Center
SES Director, Tactical Computer Systems Center
SES Director, Sytems Engineering and Integration Center
SES Director, Procurement & Production
SES Technical Director (SATCOMA)

US Army Depot Systems Command (DESCOM)

SES Deputy for Command Operations

US Army Electronics R&D Command (ERADCOM) Headquarters

SES Technical Director
SES Chief Counsel
SES Director, Night Vision & Electronic Optics Lab
SES Deputy Director, Night Vision & Electronic Optics Lab
SES Director, Signals Warfare Lab
SES Director, Electronic Warfare Lab
SES Director, Electronics Technology & Devices Lab
SES Deputy Director, Combat Surveillance & Target Acquisition Lab
SES Technical Director, Harry Diamond Lab

US Army Missile Command (MICOM)

SES Technical Director and Director, Army Missile Lab
SES Director for Procurement and Production
SES Chief Counsel
SES Director, Missile Logistics Center
SES Deputy Project Manager, Roland
SES Director, Product Assurance
SES Assistant Deputy for Readiness
SES Deputy Director, Missile Intelligence Agency

U.S. Army Troop Support Command (TROSCOM)

SES Technical Director, Belvoir Research and Development Center
SES Technical Director, Natick Research and Development Center
SES Director, Individual Protection Lab
SES Director, Science and Advanced Technology Lab
SES Director, Food Engineering Lab

Project Managers ABRAMS Tank System

SES Chief Engineer/Chief Systems Engineering Division

Office of the Project Manager, Bradley Fighting Vehicle Systems (FVS)

SES Deputy Project Manager

U.S. Army Tank-Automotive Command (TACOM)

SES* Technical Director
SES* Director, Procurement and Production
SES Chief Counsel
SES Director, Product Assurance

U.S. Army Human Engineering Laboratory (HEL)

SES* Director

Program Manager, Joint Tactical Fusion Program

SES* Deputy Program Manager

U.S. Army Toxic and Hazardous Materials Agency (THAMA)

SES* Technical Director

U.S. Army Foreign Science & Technology Center (FSTC)

SES Deputy Director

U.S. Army Test & Evaluation Command (TECOM)

SES Technical Director

SES Technical Director and Chief, Scientists, WSMR
SES Scientific Director
SES Technical Director, EPG
SES Technical Director, National Range Operations
SES Associate Director, Materiel Test
SES Director for Analysis

U.S. ARMY COMMUNICATIONS COMMAND (USACC)

SES* Comptroller

TRADOC OPERATIONS RESEARCH ACTIVITY

SES Director, TRADOC Operations Research Activity (TORA)
SES* Director, U.S. Army Combat Dev. Exp. Activity
SES* Director, TRASANA

CORPS OF ENGINEERS

DIRECTORATE OF ENGINEERING & CONSTRUCTION (E&C)

SES* Deputy Director, Engineering & Construction
SES* Chief, Engineering Division
SES* Deputy Chief, Engineering Division
SES* Chief, Construction Division
SES* Deputy Chief, Construction Division

DIRECTORATE OF CIVIL WORKS (CW)

SES* Chief, Operations & Readiness Division
SES* Special Assistant for Emergency Water Planning

OFFICE OF THE ASSISTANT CHIEF OF ENGINEERS (ACE)

SES* Deputy Assistant Chief of Engineers for Planning, Programming & Congressional Affairs

COASTAL ENGINEERING RESEARCH CENTER (CERC)

SES* Chief, Coastal Engineering Research Center

US ARMY ENGINEER TOPOGRAPHIC LABORATORIES (ETL)

SES* Technical Director

DIRECTORATE OF RESOURCE MANAGEMENT (DRM)

SES* Deputy Director, Resource Management

MRC AND LOWER MISSISSIPPI VALLEY (MRC/LMV)

SES* Chief, Construction-Operations Division

US ARMY ENGINEER DIVISION, EUROPE (EUR)

SES* Chief, Construction Division

US ARMY FORCES COMMAND

SES* Deputy Comptroller

THE ARMY STAFF

0-8 Director, Management
0-8 Chief, Army Force Modernization Coordination Office
0-8 Director, Program Analysis and Evaluation
0-8 Assistant Deputy Chief of Staff for Personnel
0-8 Assistant Deputy Chief of Staff for Operations and Plans
0-8 Director, Strategic Plans & Policy
0-8 Assistant Deputy Chief of Staff for Logistics
0-8 ADCSRDA
0-8 Director of Army Budget
0-8 Chief, Army Reserve
0-7 Deputy Chief, Army Reserve
0-8 Director, Army National Guard
0-8 Assistant Chief of Staff for Operations & Plans (C4)/Director, Command and Control, Communications and Computers
0-7 Deputy Directors, C4 (2)
0-8 Assistant Chief of Staff for Intelligence
0-7 Deputy Assistants Chief of Staff for Intelligence for Intelligence Systems and Automation
0-7 Deputy Assistant Chief of Staff for Intelligence
0-8 The Adjutant General/CG, TAGCEN
0-7 Deputy TAG/DCG, TAGCEN
0-8 Chief of Chaplains
0-8 The Judge Advocate General
0-8 The Assistant Judge Advocate General
0-8 The Deputy Surgeon General
0-7/0-8 Assistant Surgeon General (Research & Development)
0-8 Deputy Chief of Engineers and Chairman, Board of Engineers for Rivers and Harbors

ARMY STAFF FIELD OPERATING AGENCIES

OFFICE, CHIEF OF STAFF

0-7 Commanding General, Ballistic Missile Defense Systems Command, Huntsville, Alabama
0-8 Commanding General, US Army Operational Test and Evaluation Agency, Falls Church, Virginia

OFFICE, DEPUTY CHIEF OF STAFF FOR PERSONNEL

0-8 Commanding General, USA Military Personnel Center, Alexandria, Virginia
0-8 Commanding General, USA Recruiting Command, Fort Sheridan, Illinois

0-7 Deputy Commanding General, East USA Recruiting Command, Fort Sheridan, Illinois

0-7 Deputy Commanding General, West USA Recruiting Command, Fort Sheridan, Illinois

Office, Deputy Chief of Staff for Logistics

0-7 Commanding General, US Army Troop Support Agency, Fort Lee, Virginia

Office, Deputy Chief of Staff for Operations and Plans

0-8 Commanding General, US Army Computer Systems Command, Fort Belvoir, Virginia

Office, The Deputy Chief of Staff for Personnel

0-7 Commanding General, US Army Reserve Components Personnel and Administration Center, St. Louis, Missouri

Office, The Judge Advocate General

0-7 Commanding General, Chief Judge, US Army Legal Services Agency/United States Court of Military Review, Falls Church, Virginia

OFFICE OF THE SURGEON GENERAL

0-7/0-8 Commanding General, US Army Medical Research and Development Command, Fort Detrick, Maryland

US Army Research Institute for Infectious Diseases (USA MRIID)

SES* Special Advisor for Biotechnology

US Army Training and Doctrine Command—FORT MONROE, VIRGINIA

0-8 Chief of Staff

0-8 Deputy Chief of Staff, Combat Developments

0-8 Commanding General, TRADOC Combined Arms Test Activity, Fort Hood, Texas

US Army Materiel Development and Readiness Command, Alexandria, Virginia

0-8 Deputy Commander, Resources and Management

0-7/0-8 Director, Development, Engineering & Acquisition

0-8 Director, Procurement & Production

0-7 Director, Supply, Maintenance and Transportation

0-7/0-8 Director, Security Assistance/CDR, USA Security Assistance Center

0-8 Comptroller

0-8 Commanding General, US Army Tank-Automotive Command, Warren, Michigan

0-7 Deputy Commanding General for Research & Development, US Army Tank-Automotive Command, Warren, Michigan

0-8 Commanding General, US Army Aviation Research and Development Command, St. Louis, Missouri

0-8 Commanding General, US Army Troop Support and Aviation Materiel Readiness Command—St. Louis, Missiouri

0-7 Deputy Commanding General, US Army Troop Support and Aviation Materiel Readiness Command—St. Louis, Missiouri

0-8 Commanding General, US Army Armament Munitions & Chemical Command—Rock Island, Illinois

0-7 Deputy Commanding General for Procurement and Readiness, US Army Armament Munitions & Chemical Command—Rock Island, Illinois

0-8 Commanding General, US Army Armament Research and Development Center—Picatinny Arsenal, New Jersey

0-7 Commanding General, USA Chemical Research & Development Center—Picatinny Arsenal, New Jersey

0-7* Commanding General, US Army Armament Research and Development Center—Picatinny Arsenal, New Jersey

0-8 Commander, US Army Missile Command—Redstone Arsenal, Alabama

0-7 Deputy Commanding General for Procurement & Readiness, US Army Missile Command—Redstone Arsenal, Alabama

0-7 Deputy Commanding General for Research and Development, US Army Missile Command—Redstone Arsenal, Alabama

0-8 Commanding General, US Army Communications & Electronics Command

0-7 Deputy Commanding General for Procurement and Readiness, US Army Communications & Electronics Command

0-8 Commanding General, US Army Electronics Research & Development Command—Adelphi, Maryland

0-8 Commanding General, US Army Test & Evaluation Command—Aberdeen Proving Ground, Maryland

0-7 Commanding General, White Sands Missile Range—White Sands, New Mexico

0-7 Commanding General, US Army Depot System Command—Chambersburg, Pennsylvania

0-8 Project Manager, M-1 Tank—Warren, Michigan

0-8 Project Manager, Patriot—Redstone Arsenal, Alabama

0-7 Project Manager, Fighting Vehicle Systems—Warren, Michigan

0-7 Program Manager, Advanced Attack Helicopter Program—St. Louis, Missouri

0-7 Project Manager, Saudi Arabian National Guard Modernization—Saudi Arabia

U.S. Army Communications Command

0-7 Commanding General, US Army Communications Systems Agency, Fort Monmouth, New Jersey

OTHER COMMANDS

0-8 Commander, Military Traffic Management Command, Washington, D.C.

0-8 Commanding General, US Army Intelligence and Security Command, Arlington, Virginia

0-8 Commanding General, US Army Military District of Washington, Washington, D.C.

0-8 Commanding General, US Army Criminal Investigation Command, Falls Church, Virginia

0-8 Commanding General, US Army Health Services Command, Fort Sam Houston, Texas

MAJOR OVERSEAS COMMANDS

US ARMY, EUROPE AND SEVENTH ARMY

0-8 Chief of Staff

0-8 Deputy Chief of Staff, Engineer

SES* Assistant Deputy Chief of Staff, Engineer (Engineering & Housing)

0-8 Commanding General, US Army Southern European Task Force

U.S. ARMY JAPAN/IX CORPS

0-7/0-8 Chief of Staff

Special Activities

ARMY AND AIR FORCE EXCHANGE SERVICE

0-8 Commander, Army and Air Force Exchange Service—Dallas, TX

AGENCY: DEPARTMENT OF THE NAVY

Positions:

OFFICE OF THE ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)

SES Principal Deputy Assistant Secretary of the Navy (Manpower and Reserve Affairs)

SES Deputy Assistant Secretary of the Navy (Manpower)

SES Deputy Assistant Secretary of the Navy (Reserve Affairs)

SES Deputy Assistant Secretary of the Navy (CPP/EEO)

OFFICE OF THE ASSISTANT SECRETARY OF THE NAVY (SHIPBUILDING AND LOGISTICS)

SES Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics)

SES Director, Office of Small and Disadvantaged Business Utilization

SES Director of Resources & Policy Evaluation

SES Deputy Assistant Secretary of the Navy (Installations and Facilities)

SES Deputy Assistant Secretary of the Navy (Sealift & Maritime Affairs)

SES* Director, Acquisition Regulations

OFFICE OF THE ASSISTANT SECRETARY OF THE NAVY (RESEARCH, ENGINEERING AND SYSTEMS)

SES Deputy Assistant Secretary of the Navy (Research & Applied Science)

SES Associate Deputy Assistant Secretary of the Navy (Systems Engineering)

SES Principal Deputy Assistant Secretary of the Navy (Research, Engin, and Systems)

SES Deputy Assistant Secretary of the Navy (Command, Control, Communications & Intelligence)

OFFICE OF THE UNDER SECRETARY OF THE NAVY

SES* Deputy Under Secretary of the Navy (Policy)

OFFICE OF THE ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT)

SES Special Assistant for Data Automation

OFFICE OF THE AUDITOR GENERAL OF THE NAVY

SES Auditor General of the Navy

OFFICE OF THE COMPTROLLER OF THE NAVY

SES Executive Assistant Comptroller for Banking Cash Management Contract Financing & Compensation Systems

OFFICE OF THE GENERAL COUNSEL

SES General Counsel of the Navy

SES Principal Deputy General Counsel

SES Deputy General Counsel (Logistics)

OFFICE OF THE CHIEF OF NAVAL OPERATIONS

SES Asst. Dep. Chief of Naval Operations (Civ. Pers/EEO)

NAVAL DATA AUTOMATION COMMAND

SES Technical Director

MILITARY SEALIFT COMMAND

SES Deputy Executive Director

OFFICE OF THE CHIEF OF NAVAL EDUCATION AND TRAINING

SES Principal Advisor for Education & Training/Deputy CNET for Ed. Development & R&D

US MARINE CORPS HEADQUARTERS

SES Fiscal Director of the Marine Corps

SES Assistant Deputy Chief of Staff for Installations and Logistics

SES Director, Contracts Division

OFFICE OF NAVAL RESEARCH

SES Director, Acquisition

NAVAL MATERIAL COMMAND HEADQUARTERS

SES Executive Director for Contracts and Business Management

SES Assistant Deputy Chief of Naval Material (Operations and Logistics)

SES Deputy Chief of Naval Material for Reliability, and Engineering

SES Director, Procurement Control & Clearance Division

SES Deputy Chief of Naval Material

STRATEGIC SYSTEMS PROJECT OFFICE

SES Director, Plans and Program Division

JOINT CRUISE MISSILE PROJECT OFFICE

SES Technical Director Joint Cruise Missiles Project

NAVAL AIR SYSTEMS COMMAND HQ

SES* Deputy Commander

SES Executive Director for Procurement Management

NAVAL ELECTRONIC SYSTEMS COMMAND

SES Executive Director, Contracts

NAVAL FACILITIES ENGINEERING COMMAND HEADQUARTERS

SES Assistant Commander for Contracts

NAVAL SEA SYSTEMS COMMAND HQ

SES Assistant Deputy Commander for Contracts

NAVAL SUPPLY SYSTEMS COMMAND HEADQUARTERS

SES Assistant Deputy Commander, Plans, Policy and Systems Design

Military

0-7 Assistant Deputy Commander for Surface Ships Logistics Management, NAVSEASYSCOM

0-7 Deputy Commander for Surface Ships, NAVSEASYSCOM

0-8 Vice Commander, Naval Air Systems Command

0-7/0-8 Deputy Commander for Plans and Programs, Naval Air Systems Command

0-7 Assistant Commander for Contrac[illegible] Naval Air Systems Command

0-8 Assistant Commander for Logistic and Fleet Support, Naval Air Systems Command

0-8 Assistant Commander for Systems and Engineering, Naval Air Systems Command

0-7 Assistant Commander for Test and Evaluation, Naval Air Systems Command

0-7 Commander, Naval Aviation Logistics Center, Naval Air Systems Command

0-7 Deputy Chief of Naval Material for Logistics, Plans & Programs Chief HDQTRS NAVMATCOMD

0-7/0-8 Deputy Chief of Naval Material for Acquisition, Plans & Programs Chief HDQTRS NAVMATCOMD

0-7/0-8 Project Manager, TRIDENT System, Project Office, Naval Material Command

0-7 Major Project Manager, LAMPS, NAVAIRSYSCOM

0-7 Project Manager, Saudi Naval Expansion Program, NAVMAT

0-7 Director, Joint Cruise Missile Project, Joint Cruise Missiles Project Office (JPM-3) NAVMAT

0-7/0-8 Director, Technical Division Strategic Systems Projects, SSPO

0-7 Program Manager, ASW Systems Project Office Anti-Submarine Warfare Systems Project Office ADDU: Deputy Director OP-92

0-8 Vice Commander, Naval Sea Systems Command and Chief of Staff

0-7 Deputy Commander for Contracts NAVSEASYSCOM

0-7/0-8 NAVSEA Deputy Commander for Acquisition, Logistics NAVSEASYSCOM

0-7/0-8 Deputy Commander for Combat, Systems, NAVSEASYSCOM ADDU: to OP-03X

0-7 Assistant Deputy Commander for Anti-Submarine Warfare and Underwater Systems, NAVSEASYSCOM

0-7/0-8 Project Manager, AEGIS Shipbuilding Project, NAVSEASYSCOM

0-7/0-8 Deputy Commander for Industrial and Facility Management, NAVSEASYSCOM

0-7/0-8 Deputy Commander for Submarines, NAVSEASYSCOM

0-7 Supervisor for Shipbuilding, Conversion & Repair, Newport News Shipbuilding & Drydock Co., USN

0-7/0-8 Deputy Commander for Command, Control, Communications and Intelligence Systems and Technology, Naval Electronic Systems Command

0-7/0-8 Deputy Commander for Ship Design and Integration, Naval Sea Systems Command

0-8 Commander, Naval Supply Systems Command and Chief of Supply Corps

0-7/0-8 Vice Commander, Naval Supply Systems Command

0-7/0-8 Commanding Officer, Navy Ships Parts Control Center, Mechanicsburg, PA

0-7 Supervisor of Shipbuilding Commanding Officer, Shore Activity, Pascagoula, MS

0-7/0-8 Commander, Navy Resale and Services Support Office, Staten Island

0-7/0-8 Commanding Officer, Navy Aviation Supply Office, Philadelphia, PA

0-8 Commander, Naval Electronics Systems Command

0-8 Vice Commander, Naval Electronics Systems Command

0-7/0-8 Commander, Naval Oceanography Command

0-8 Commander, Naval Telecommunications Command

0-8 Commander, Naval Facilities Engineering Command/Chief of Civil Engineering of the Navy

0-7/0-8 Vice Commander, Naval Facilities Engineering Command

0-7 Deputy Commander for Planning, Naval Facilities Engineering Command ADDU: to OP-04E

0-7/0-8 Commanding Officer, Shore Activity, Atlantic Division, Naval Facilities Engineering Command ADDU: ACOS Facilities Engineer CIN CLANTFLT

0-7/0-8 Deputy Commander for Life Cycle Engineering and Platform Integration, NELEXOP

0-8 Director, Strategic System Project Office, NAVMAT

0-8 Deputy Commander, Military Sealift Command

0-7/0-8 Commanding Officer Shore Activity, Pacific Division, Naval Facilities Engineering Command, ADDU: Fleet Civil Engineer CIN CPACFLT

0-7 Commanding Officer Shore Activity, Northern Division, Naval Facilities Engineering Command, Philadelphia

0-7 Commanding Officer Shore Activity, Western Division, Naval Facilities Engineering Command, San Bruno

0-7/0-8 Director, Multilateral Support Force, Amphibious, Mine and Advanced Naval Vehicles Ships Division, CNO

0-7/0-8 Director, Logistics Plans Division, CNO

0-7/0-8 Director, Material Division, CNO

0-7/0-8 Director, Ships Maintenance and Modernization Division, CNO

0-7/0-8 Director, Shore Activities Planning and Programming Division, CNO

OFFICE OF THE COMPTROLLER OF THE NAVY

0-7/0-8 Deputy Comptroller of the Navy

0-7/0-8 Director of Budget and Reports/Fiscal Management Division, Office of the Navy Comptroller

0-7/0-8 Assistant Comptroller, Financial Management Systems/Commander, Navy Accounting and Finance Center

0-7 Deputy Chief for Contracts and Business Management, NAVMAT

0-7 Supervisor of Shipbuilding, Conversion and Repair, Groton, CT

Other Officers

0-7/0-8 Commanding General, Marine Corps Development and Education Command, Quantico, Virginia

0-7/0-8 Deputy Chief of Staff for Research Development and Studies, HQMC

0-7/0-8 Deputy Chief of Staff for Requirements and Programs HQMC

0-7/0-8 Director, Personnel Procurement, HQMC

0-7/0-8 Director of Material Division, HQMC

0-7/0-8 Director, Facilities and Services Division, HQMC

0-7/0-8 Director, Command, Control, Communications and Computer Systems Division, HQMC

0-7/0-8 Commanding General Marine Corps Logistics Base, Albany, Georgia

0-7/0-8 Commanding General Marine Corps Logistics Base, Barstow, California

0-7/0-8* Director of the Development Center, Marine Corps Development and Education Command, Quantico, Virginia

0-8* Assistant Deputy Chief of Naval Operations (Logistics)

0-8* Deputy Commander for Plans, Comptroller, NAVSEASYSCOM

0-8* Assistant Commander, Inventory & Systems Integrity, NAVSUPSYSCOM

0-8* Competition Advocate General of the Navy

0-7/0-8* Project Manager, Navy Space Project Office

0-7* Project Manager, REWSON Systems Project

0-7* Deputy Commander, Financial Management/Comptroller NAVSUPSYSCOM

0-8* Commander, Naval Medical Command

0-7* Commander, Readiness & Logistics, NAVMEDCOM

0-7* Deputy Auditor General, Naval Auditor Services Command

0-7* Commander, Naval Space Command

0-7* Commander, Fuel Supply Center, Alexandria, Virginia

AGENCY: DEFENSE COMMUNICATIONS AGENCY

Positions:

0-7 Director, Defense Communications System Organization (DCSO)

0-7 Commander, White House Communications Agency

0-7 Director, Command & Control Technical Center (CCTC)

SES Deputy Director, WWMCCS ADP Technical Support, CCTC

SES Comptroller, DCA

SES Director, Planning & Systems Integration Center (PSIC)

0-8 Vice Director, Defense Communications Agency

SES Principal Deputy Director, DCEC

SES Deputy Director, CCTC

SES Associate Director for Integration Systems Design, DCEC

SES Deputy Manager, National Communications System, DCA

SES Chief, Strategic Connectivity Engineering Division, CCTC

SES Deputy for Communications Architecture, PSIC

SES Assistant Deputy Director, Plans & Programs, DCSO

SES Deputy Director, Switched Systems, DCS
SES General Counsel, DCA
SES* Deputy Director for C^3 Architecture and Mission Analysis, PSIC
SES Deputy Director, Military Satellite Communications Systems, PSI
SES Deputy Director for C^3 Engineering, CCTC
SES Deputy Director, DCSO
SES* Deputy Director, Switched Network Engineering Division, DCEC

AGENCY: DEFENSE CONTRACT AUDIT AGENCY

Positions

SES Director
SES Deputy Director
SES General Counsel
SES Assistant Director, Operations and Professional Development
SES Assistant Director, Policy and Plans
SES Assistant Director, Resources
SES Director, Field Detachment
SES Regional Director, Atlanta
SES Regional Director, Boston
SES Regional Director, Chicago
SES Regional Director, Los Angels
SES Regional Director, Philadelphia
SES Regional Director, San Francisco

AGENCY: DEFENSE INTELLIGENCE AGENCY

Positions:

DISES Deputy Director for Intelligence and External Affairs
DISES* Deputy Director for Resources and Systems
DISES* Assistant Deputy Director for Defense Intelligence Systems
DISES Assistant Deputy Director for Plans and Policy
DISES GDIP Staff Director
DISES* Staff Director, Intelligence Communications Architecture Project Office
0-8 Deputy Director, Defense Intelligence Agency
0-8* Deputy Director for Management and Operations

AGENCY: DEFENSE INVESTIGATIVE SERVICE

Positions:

SES* Director
SES* Deputy Director (Industrial Security)
SES* Deputy Director (Investigations)

AGENCY: DEFENSE LOGISTICS AGENCY

Positions:

0-8 Deputy Director
0-8 Deputy Director (Acquisition Management)
0-7 Executive Director, Supply Operations
0-7/0-8 Executive Director, Office of Telecommunications and Information Systems
0-7/0-8 Executive Director, Quality Assurance
0-8 Commander, Defense Construction Supply Center
0-7 Commander, Defense Electronics Supply Center
0-8 Commander, Defense Fuel Supply Center
0-7 Commander, Defense General Supply Center
0-7 Commander, Defense Industrial Supply Center
0-8 Commander, Defense Personnel Support Center
0-7 Commander, Defense Contract Administration Services Region, Los Angeles

HEADQUARTERS

SES Comptroller, DLA
SES General Counsel, DLA
SES Executive Director, Technical and Logistics Services
SES Executive Director, Contracting
SES Deputy Executive Director, Supply Operations
SES Executive Director, Contract Management
SES Associate General Counsel, DLA
SES Chief, Logistics Programs Division, Directorate of Supply Operations
SES Chief, Contracts Division, Directorate of Contracting
SES Deputy Assistant Director, Office of Telecommunications and Information Systems
SES Deputy Executive Director, Quality Assurance
SES Staff Director, Small and Disadvantaged Business Utilization
SES Chief, Accounting and Finance Division, Office of Comptroller
SES Financial Manager, Defense Personnel Support Center
SES* Deputy Comptroller, Office of Comptroller
SES* Chief, AIS Development and Control Division, Office of Telecommunications and Information Systems
SES* Chief, ADP and Telecommunications Technology Division, Office of Telecommunications and Information Systems

AGENCY: DEFENSE MAPPING AGENCY

Positions:

SES Deputy Director, Management & Technology
SES Deputy Director, for Programs, Production/Operations

SES Deputy Director for Systems and Techniques
SES Comptroller
0-8 Director, Defense Mapping Agency
0-7 Deputy Director, Defense Mapping Agency
0-7 Deputy Director for Plans and Requirements
SES Director of Personnel
SES Assistant Deputy Director for Programming
SES Assistant Deputy Director for Production and Distribution
SES Chief, Advanced Technology Division
SES Chief, Acquisitions Systems Development Division
SES Director, Special Program Office for Exploitation Modernization

AGENCY: DEFENSE NUCLEAR AGENCY

Positions:

AD Deputy Director, Science and Technology
AD Scientific Assistant to the deputy Director, Science and Technology
AD Assistant to the Deputy Director (Science and Technology) for Theoretical Research
AD Assistant to the Deputy Director (Science and Technology) for Experimental Research
AD Assistant to the Deputy Director (Science and Technology) for Testing
AD Scientific Advisor to the Director, Armed Forces Radiobiology Research Institute
0-8 Deputy Director (Operations and Administration)
0-7 Commander, Field Command
SES Director, Acquisition Management
SES Comptroller

AGENCY: NATIONAL SECURITY AGENCY

Positions:

Military Positions

0-8 Assistant Deputy Director, NSA
0-7 Chief of the Office of Support to Military Operations

AGENCY: DEPARTMENT OF EDUCATION

Positions:

Office of the Secretary

SES Counselor/Executive Assistant to the Secretary
SES Executive Secretary to the Secretary

Office of the Under Secretary

SES Director of Regional Liaison

Deputy Under Secretary for Management

SES Comptroller
SES Administrator for Management Services

Deputy Under Secretary for Planning, Budget and Evaluation

SES Director of Budget Services
SES Director of Planning and Evaluation Services

Deputy Under Secretary for Intergovernmental and Interagency Affairs

SES Director, Intergovernmental Affairs

Assistant Secretary for Legislation and Public Affairs

SES Deputy Assistant Secretary for Legislation
SES Deputy Assistant Secretary for Public Affairs

General Counsel

SES Deputy General Counsel for Department Services
SES* Assistant to the Secretary for Regulatory Reform and Deputy General Counsel for Regulations and Legislation
SES Associate General Counsel for Programs

Inspector General

SES Deputy Inspector General
SES Assistant Inspector General for Investigation
SES Assistant Inspector General for Policy, Planning and Management
SES Assistant Inspector General for Audit

Office of Civil Rights

SES Deputy Assistant Secretary for Civil Rights (Operations)
SES Director of Policy and Enforcement Service

Office of Bilingual Education and Minority Language Affairs

SES Director Office of Bilingual Education and Minority Language Affairs
SES Deputy Director Office of Bilingual Education and Minority Language Affairs

Office of Special Education and Rehabilitative Services

SES Deputy Assistant Secretary
SES Deputy Director, National Institute of Handicapped Research
SES Director, Office of Special Education Programs
SES Executive Administrator

OFFICE OF POSTSECONDARY EDUCATION

SES Deputy Assistant Secretary for Student Financial Assistance
SES Deputy Assistant Secretary for Higher Education Programs

OFFICE OF VOCATIONAL AND ADULT EDUCATION

SES Deputy Assistant Secretary for Vocational and Adult Education
SES Director of Policy Analysis and Legislation

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

SES Deputy Assistant Secretary for Programs and Administration
SES Deputy Assistant Secretary for Dissemination and Special Initiatives

OFFICE OF EDUCATION RESEARCH AND IMPROVEMENT

SES Deputy Assistant Secretary for Educational Research and Improvement
SES Deputy Director, National Institute of Education
SES Administrator, National Center for Education Statistics
SES Director, Center for Libraries and Education Improvement

AGENCY: DEPARTMENT OF ENERGY

Positions:

OFFICE OF THE SECRETARY

SES Executive Assistant to the Deputy Secretary
SES Special Assistant to the Secretary for Programs and Policies
SES* Special Assistant to the Secretary for Outreach Programs
SES Manager, Albuquerque Operations Office
SES Deputy Manager, Albuquerque Operations Office
SES Regional Representative of the Secretary/Manager, Chicago Operations Office
SES Deputy Manager, Chicago Operations Office
SES Manager, Idaho Operations Office
SES Deputy Manager, Idaho Operations Office
SES Manager, Nevada Operations Office
SES Deputy Manager, Nevada Operations Office
SES Manager, Oak Ridge Operations Office
SES Deputy Manager, Oak Ridge Operations Office
SES Manager, Richland Operations Office
SES Deputy Manager, Richland Operations Office
SES* Executive Assistant to the Under Secretary
SES* Executive Assistant to the Secretary
SES* Associate Director of Storage and Systems Development
SES* Special Assistant to the Secretary for Nuclear Reactor Safety
SES* Principal Deputy Assistant Secretary for Defense Programs and Manager, Savannah River Operations Office
SES Manager, San Francisco Operations Office
SES Deputy Manager, San Francisco Operations Office
SES Deputy Manager, Savannah River Operations Office

OFFICE OF THE INSPECTOR GENERAL

SES Assistant Inspector General for Audits
SES Assistant Inspector General for Inspections
SES Assistant Inspector General for Investigations

OFFICE OF THE GENERAL COUNSEL

SES Deputy General Counsel
SES Deputy General Counsel for Regulations
SES Deputy General Counsel for Enforcement and Litigation
SES Deputy General Counsel for Programs
SES Deputy General Counsel for Legal Services

ECONOMIC REGULATORY ADMINISTRATION

SES Deputy Administrator, Office of the Administrator
SES Special Counsel for Compliance, Office of Special Counsel
SES Deputy Special Counsel for Compliance, Office of Special Counsel
SES Solicitor, Office of the Solicitor
SES Director, Office of Fuels Programs, Office of Fuels Programs
SES Deputy Director, Office of Fuels Programs, Office of Fuels Programs

ENERGY INFORMATION ADMINISTRATION

SES Deputy Administrator, Energy Information Administration
SES Director, Office of Oil and Gas
SES Director, Office of Energy Markets and End Use
SES Director, Office of Statistical Standards

ASSISTANT SECRETARY FOR CONSERVATION AND RENEWABLE ENERGY

SES Principal Deputy Assistant Secretary for Conservation and Renewable Energy
SES Administrator, Alaska Power Administration
SES Administrator, Bonneville Power Administration

SES Assistant Administrator for Engineering and Construction, Bonneville Power Administration
SES Assistant Administrator for Power Management, Bonneville Power Administration
SES Deputy Administrator, Bonneville Power Administration
SES Assistant Administrator for Conservation and Direct Application—Renewable Resource, Bonneville Power Administration
SES Administrator, Southeastern Power Administration
SES Administrator, Southwestern Power Administration
SES Deputy Administrator, Southwestern Power Administration
SES Deputy Assistant Secretary for Conservation
SES Deputy Assistant Secretary for Renewable Energy

ASSISTANT SECRETARY FOR POLICY, SAFETY AND ENVIRONMENT

SES Director, Office of Environmental Compliance, Deputy Assistant Secretary for Environment, Safety and Health
SES Deputy Assistant Secretary for Environment, Safety and Health
SES Deputy Director, Office of Policy, Planning and Analysis

ASSISTANT SECRETARY FOR DEFENSE PROGRAMS

SES Principal Deputy Assistant Secretary for Defense Programs
SES Deputy Assistant Secretary for Security Affairs
SES Deputy Director, Office of Military Applications, Deputy Assistant Secretary for Military Applications
SES Deputy Director, Office of Inertial Fusion
SES Director, Office of Inertial of Fusion
SES Director, Office of International Security Affairs
SES Deputy Director, Office of International Security Affairs
SES Director, Office of Classification
SES Deputy Director, Office of Classification
SES Deputy Director, Office of Safeguards and Securities
SES Director, Office of Nuclear Materials Production, Deputy Assistant Secretary for Nuclear Materials Production
SES Deputy Director, Office of Nuclear Materials Production, Deputy Assistant Secretary for Nuclear Materials Production
SES Deputy Assistant Secretary for Nuclear Materials
SES Director, Office of Defense Waste and Byproducts Management, Deputy Assistant Secretary for Nuclear Materials
SES* Deputy Director, Office of Defense Waste and Byproducts Management, Deputy Assistant Secretary for Nuclear Materials
SES* Deputy Assistant Secretary for Intelligence
06 Deputy Assistant Secretary for Military Applications/Director of Military Applications

ASSISTANT SECRETARY FOR INTERNATIONAL AFFAIRS AND ENERGY EMERGENCIES

SES Deputy Assistant Secretary for Environmental Protection, Safety and Emergency Preparedness
SES Principal Deputy Assistant Secretary for International Affairs
SES Deputy Assistant Secretary for Energy Emergencies
SES Deputy Director, Office of Technical Cooperation

OFFICE OF ENERGY RESEARCH

SES Deputy Director, Office of Energy Research
SES Associate Director, Office of Health and Environmental Research
SES Deputy Associate Director, Office of Health and Environmental Research
SES Associate Director, Office of Fusion Energy
SES Deputy Associate Director, Office of Fusion Energy
SES Director, Office of Field Operations Management
SES Director, Office of Program Analysis
SES Associate Director, Office of Basic Energy Sciences
SES Deputy Associate Director for Basic Energy Sciences, Office of Basic Energy Sciences
SES Associate Director of High Energy and Nuclear Physics

ASSISTANT SECRETARY FOR FOSSIL ENERGY

SES Principal Deputy Assistant Secretary for Fossil Energy
SES Deputy Assistant Secretary for Strategic Petroleum Reserve
SES Deputy Assistant Secretary for Management, Planning and Technical Coordination
SES Deputy Assistant Secretary for Coal Utilization, Advanced Conversions and Gasification
SES Deputy Assistant Secretary for Oil, Shale and Coal Liquids

ASSISTANT SECRETARY FOR NUCLEAR ENERGY

SES Principal Deputy Assistant Secretary for Nuclear Energy
SES Deputy Director for Naval Reactors, Deputy Assistant Secretary for Naval Reactors

SES Deputy Assistant Secretary for Uranium Enrichment
SES Deputy Assistant Secretary for Breeder Reactor Programs

ASSISTANT SECRETARY, MANAGEMENT AND ADMINISTRATION

SES Director, Office of Equal Opportunity
SES* Deputy Director, Office of Equal Opportunity
SES Deputy Director, Office of Administrative Services
SES Director of Administration
SES Deputy Director of Administration
SES Director, Office of Personnel
SES Director, Office of Organization and Management Systems
SES Deputy Director, Office of Organization and Management Systems
SES Deputy Director Of Project and Facilities Management
SES Director, Office of Project and Facilities Management
SES Director, Office of Administrative Services
SES Director, Office of ADP Management
SES Deputy Director, Office of ADP Management
SES Director, Office of Computer Services and Telecommunications Management
SES Deputy Director, Office of Computer Services and Telecommunications Management
SES Director, Office of Industrial Relations
SES Director, Office of Small and Disadvantaged Business Utilization
SES Director, Office of Policy
SES* Assistant Controller, Budget Policy and Compliance
SES* Assistant Controller, Financial Systems and Accounting
SES Director, Office of Procurement Support,
SES Director, Office of Procurement Review, Office of Procurement Review
SES Director, Office of Procurement Operations
SES Deputy Director, Office of Procurement Operations
SES Controller
SES Director, Office of Budget
SES Director, Procurement and Contract Management
SES* Deputy Director, Office of Budget
SES Deputy Director, Procurement and Contract Management

ASSISTANT SECRETARY, CONGRESSIONAL, INTERGOVERNMENTAL AND PUBLIC AFFAIRS

SES Deputy Assistant Secretary for House Liaison
SES Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs

AGENCY: DEPARTMENT OF HEALTH AND HUMAN SERVICES

Positions:

OFFICE OF THE SECRETARY

IMMEDIATE OFFICE OF THE SECRETARY

SES Chief of Staff
SES Executive Assistant to the Secretary
SES Executive Secretary
SES Deputy Executive Secretaries to the Department (2)
SES* Executive Administrative Assistant
SES* Senior Advisor to the Secretary/Executive Officer
SES* Senior Advisor to the Secretary
SES* Special Assistant to the Secretary (3)

IMMEDIATE OFFICE OF THE UNDER SECRETARY

SES Counselor to the Under Secretary
SES Deputy Under Secretary/Intergovernmental Affairs
SES Principal Regional Official—Region I
SES Principal Regional Official—Region II
SES Principal Regional Official—Region III
SES Principal Regional Official—Region IV
SES Principal Regional Official—Region V
SES Principal Regional Official—Region VI
SES Principal Regional Official—Region VII
SES Principal Regional Official—Region VIII
SES Principal Regional Official—Region IX
SES Principal Regional Official—Region X
SES Chairman, Departmental Grant Appeals Board

OFFICE OF PLANNING AND EVALUATION

SES Assistant Secretary for Planning and Evaluation
SES Principal Deputy Assistant Secretary for Planning and Evaluation
SES Deputy Assistant Secretary for Income Security Policy
SES Deputy Assistant Secretary for Health Policy
SES Deputy Assistant Secretary for Program Systems
SES Deputy Assistant Secretary for Social Services Policy
SES Deputy Assistant Secretary for Evaluation and Technical Analysis

OFFICE OF INSPECTOR GENERAL

SES Assistant Inspector General for Audit
SES Deputy Assistant Inspector General for Audit
SES Senior Assistant Inspector General for Auditing and Systems

SES Assistant Inspector General for Health Care and Systems Review

SES Assistant Inspector General for Investigations

SES Deputy Assistant Inspector General for Investigations

SES Executive Assistant Inspector General

SES Associate Director, Division of University and Non-Profit Audits, Inspector General

SES Associate Director, Division of Social Security Audit, Inspector General

SES Deputy Assistant Inspector General Social Security Program Integrity Division, Office of Investigation

SES Deputy Assistant Inspector General Criminal Investigations Division, Office of Investigations

SES Assistant Inspector General for Health Financing Integrity

SES Director, Health Care Financing Audit Division, Office of Audit

OFFICE OF MANAGEMENT AND BUDGET

SES Assistant Secretary for Management and Budget

SES Deputy Assistant Secretary for Budget

SES Deputy Assistant Secretary for Finance

SES Deputy Assistant Secretary, Management Analysis and Systems

SES Deputy Assistant Secretary, Procurement, Assistance and Logistics

SES Director, Program Coordination

SES Director, Division of Health Budget Analysis, Office of Budget, Office of Management and Budget

SES Director, Division of Welfare Budget Analysis, Office of Budget, Office of Management and Budget

SES Director, Office of Procurement, and Assistance Policy, Office of Procurement, Assistance, Logistics, Office of Management and Budget

SES Director, Office of Procurement and Assistance Financial Management, Office of Procurement, Assistance and Logistics, Office of Management and Budget

SES Director, Office of Facilities and Management Services, Office of Management and Budget

SES Director, Office of Facilities Engineering, Office of Facilities and Management Services, Office of Management and Budget

SES Director, Office of Computer and Information Systems, Office of Management Analysis and Systems, Office of Management and Budget

LEGISLATION

SES Deputy Assistant Secretary for Legislation

SES Deputy Assistant Secretary for Legislation (Health)

SES Deputy Assistant Secretary for Legislation (Human Services)

SES Director of Program Coordination

SES Deputy Assistant Secretary for Legislation (Special Projects)

SES Deputy Assistant Secretary for Legislation (Congressional Liaison)

OFFICE FOR CIVIL RIGHTS

SES Special Assistant to the Secretary for Civil Rights, Director, Office for Civil Rights

SES Deputy Director for Program Operations, OCR

SES Associate Deputy Director for Program Operations, OCR

SES Deputy Director for Management and Policy, OCR

OFFICE FOR PERSONNEL ADMINISTRATION

SES Assistant Secretary for Personnel Administration

SES Deputy Assistant Secretary, Personnel

SES Director, Office of Personnel Systems Integrity

SES Deputy Assistant Secretary, Equal Employment Opportunity

OFFICE OF PUBLIC AFFAIRS

SES Deputy Assistant Secretary for Operations Management

SES Deputy Assistant Secretary for Communication Planning

SES Special Assistant to Assistant Secretary for Public Affairs

SES Deputy Assistant Secretary for Public Affairs (Public Liaison)

SES* Deputy Assistant Secretary for Planning and Initiative

OFFICE OF THE GENERAL COUNSEL

SES Deputy General Counsel, Program Review

SES Deputy General Counsel, Regulations

SES Deputy General Counsel, Litigation

SES Legal Counsel

SES Associate General Counsel for Enforcement

SES Assistant General Counsel, Legislation Division

SES Assistant General Counsel, Public Health Division

SES Assistant General Counsel, Social Security

SES Assistant General Counsel, Food and Drug Administration

SES Assistant General Counsel, Health Care Financing and Human Development

SES Assistant General Counsel, Civil Rights Division

SES Assistant General Counsel, Business and Administrative Law Division

SES Assistant General Counsel, Inspector General Division

SES Associate General Counsel

OFFICE OF CONSUMER AFFAIRS

SES Deputy Director, Office of Consumer Affairs

OFFICE OF HUMAN DEVELOPMENT SERVICES

SES Deputy Commissioner, Administration on Aging
SES Deputy Assistant Secretary, Human Development Services
GS-18 Commissioner, Administration for Children, Youth and Families
SES Deputy Commissioner, Administration for Children, Youth and Families
SES Commissioner, Administration for Native Americans
SES Commissioner, Administration on Developmental Disabilities
SES Director, Office of Program Coordination and Review
SES Director, Office of Policy Development
SES Deputy Director, Office of Policy Development
SES Deputy Director, Office of Program Coordination and Review
SES* Associate Commissioner for Program Development, Administration on Aging
SES* Director, Office of Management Services
SES* Associate Director for Program Operations, Administration on Aging

HEALTH CARE FINANCING ADMINISTRATION

SES Administrator, Health Care Financing Administration
SES Deputy Administrator, Health Care Financing Administration
SES Director, Bureau of Program Operations
SES Director, Health Standards and Quality Bureau
SES Director, Office of Management and Budget
SES Director, Office of Research and Demonstrations
SES Associate Administrator for Management and Support Services
SES Associate Administrator for Policy
SES Associate Administrator for Operations
SES Deputy Associate Administrator for Operations (Field)
SES Associate Administrator for External Affairs
SES Director, Office of Executive Operations
SES Regional Administrator, Region I
SES Regional Administrator, Region II
SES Regional Administrator, Region III
SES Regional Administrator, Region IV
SES Regional Administrator, Region V
SES Regional Administrator, Region VI
SES Regional Administrator, Region VII
SES Regional Administrator, Region VIII
SES Regional Administrator, Region IX
SES Regional Administrator, Region X
SES Director, Bureau of Eligibility Reimbursement and coverage
SES Director, Bureau of Quality Control
SES Director, Office of Legislation and Policy
SES Director, Bureau of Support Services
SES Director, Office of Public Affairs
SES Director, Bureau of Data Management and Strategy

PUBLIC HEALTH SERVICE

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH

SES Deputy Assistant Secretary, Health Operations
SES Deputy Assistant Secretary, Planning and Evaluation
SES Deputy Assistant Secretary, Population Affairs
SES/0-7/0-8 Regional Health Administrators—Regions I-X
SES Executive Director, President's Council on Physical Fitness and Sports
SES Director, National Center for Health Statistics
SES Deputy Director, National Center for Health Statistics
SES Director, National Center for Health Services Research
0-8 Deputy Surgeon General and Chief Nurse Officer, Public Health Service
0-8 Senior Advisor for Environmental Affairs
0-7 Deputy Assistant Secretary for Health, for Disease Prevention and Health Promotion

CENTER FOR DISEASE CONTROL

0-8 Director, Centers for Disease Control
SES Deputy Director, Centers for Disease Control
0-7 Assistant Director for International Health
SES Directors, Office of Program Support, Centers for Disease Control
SES Director, Licensure and Proficiency Testing Division, Laboratory Program Office
0-7 Program Manager, Expanded Program on Immunization, World Health Organization, International Health Program Office
SES Director, Clinical Chemistry Division, Center for Environmental Health
SES Assistant to Director, Center for Environmental Health
SES Director, Center for Infectious Diseases
SES* Assistant Director for Management, CDC
SES* Special Assistant for Policy Development, CDC
SES Assistant Director for Laboratory Science, Center for Infectious Diseases

SES Director, Center for Professional Development and Training
SES Director, Center for Health Promotion and Education
SES Director, National Institute for Occupational Safety and Health
0-8 Deputy Director, National Institute for Occupational Safety and Health
SES Assistant Director for Laboratory Science, Division of Parasitic Diseases, CID

Health Resources and Services Administration

0-8 Administrator, Health Resources and Services Administration
SES Deputy Administrator
0-8 Director, Bureau of Health Care Delivery and Assistance
SES Deputy Director, Bureau of Health Care Delivery and Assistance
SES Director, Bureau of Health Professions
SES Deputy Director, Bureau of Health Professions
0-8 Director, Indian Health Service
SES Deputy Director, Indian Health Service
0-8 Director, Bureau of Health Maintenance Organizations and Resources Development
SES Deputy Director, Bureau of Health Maintenance Organizations and Resources Development

Alcohol, Drug Abuse, and Mental Health Administration

SES Deputy Administrator, ADAMHA
SES Associate Administrator for Extramural Programs, ADAMHA
SES Associate Administrator for Program Planning and Coordination, ADAMHA
SES Director, National Institute on Alcohol Abuse and Alcoholism
SES Deputy Director, National Institute on Alcohol Abuse and Alcoholism
0-8 Director, National Institute of Mental Health
SES Deputy Director, National Institute of Mental Health
0-8 Director, National Institute on Drug Abuse
SES Deputy Director, National Institute on Drug Abuse

National Institutes of Health

SES* Director, NIH
SES Deputy Director, NIH
SES Deputy Director for Intramural Research
SES Deputy Director for Extramural Research and Training
SES Associate Director for Program Planning and Evaluation
SES Associate Director for Administration
SES Associate Director for Communications
SES Associate Director for Research Services
SES Associate Director for Clinical Care, NIH and Director of Clinical Center
SES* Associate Director for Intramural Affairs
SES* Associate Commissioner for Extramural Affairs
SES* Associate Director for Medical Applications of Research
SES* Associate Director for International Research and Director, Fogarty International Center
SES Director, Division of Computer Research and Technology
SES Director, Division of Research Grants
SES Deputy Director, Division of Research Grants
0-8 Director, National Cancer Institute
SES Deputy Director, National Cancer Institute
SES Director, Division of Research Resources
SES Deputy Director, Division of Research Resources
SES Director, Division of Research Services
SES Director, National Eye Institute
SES Deputy Director, National Eye Institute
SES Director, National Heart, Lung, and Blood Institute
0-7 Deputy Director, National Heart, Lung, and Blood Institute
0-8 Director, National Institute of Allergy and Infectious Diseases
SES Deputy Director, National Institute of Allergy and Infectious Diseases
SES Director, National Institute of Arthritis, Metabolism and Digestive Diseases
0-7 Deputy Director, National Institute of Arthritis, Metabolism and Digestive Diseases
0-7 Director, National Institute on Aging
SES Deputy Director, National Institute on Aging
SES Director, National Institute of Child Health and Human Development
SES Deputy Director, National Institute of Child Health and Human Development
SES Director, National Institute of Dental Research
0-8 Director, National Institute of Environmental Health Sciences
SES Deputy Director, National Institute of Environmental Health Sciences
SES Director, National Institute of General Medical Sciences
0-7 Director, National Institute of Neurological and Communicative Disorders and Stroke
SES Deputy Director, National Institute of Neurological and Communicative Disorders and Stroke
SES Director, National Library of Medicine

SES Deputy Director, National Library of Medicine

FOOD AND DRUG ADMINISTRATION

0-8 Commissioner of Food and Drugs
SES Deputy Commissioner for Food and Drugs
SES Associate Commissioner for Consumer Affairs
SES Associate Commissioner for Legislation and Information
SES Associate Commissioner for Health Affairs
SES Associate Commissioner for Planning and Evaluation
SES* Associate Commissioner for Science
SES Associate Commissioner for Regulatory Affairs
SES Director, Enforcement Policy Staff
SES Director, Parklawn Computer Center
SES Director, Orphan Products Development
SES Deputy Associate Commissioner for Regulatory Affairs
SES Associate Commissioner for Management and Operations

CENTER FOR FOOD SAFETY AND APPLIED NUTRITION

SES Director, Center for Food Safety and Applied Nutrition
SES Deputy Director, Center for Food Safety and Applied Nutrition
SES Associate Director for Toxicological Sciences
SES Director, Division of Toxicology
SES Associate Director for Laboratory Investigations
SES Director, Division of Chemistry and Physics
SES Director, Division of Microbiology
SES Associate Director for Compliance
SES Associate Director for Physical Sciences
SES Deputy Associate Director for Physical Sciences
SES Director, Division of Food Technology
SES* Director of Mathematics
SES* Director, Division of Food and Color Additives
SES Director, Division of Chemical Technology
SES Associate Director for Nutrition and Food Sciences
SES Director, Division of Regulatory Guidance
SES Associate Director for Planning and Operations
SES Deputy Associate Director for Nutrition and Food Sciences
SES Director, Division of Nutrition

CENTER FOR DRUGS AND BIOLOGICS

0-8 Director, Center for Drugs and Biologics
SES Deputy Director, Center for Drugs and Biologics
0-7 Director, Office of Biologics Research and Review
SES Deputy Director, Office of Biologics Research and Review
SES Director, Office of Compliance
SES Director, Office of Drug Research and Review
SES Deputy Director for Program Management
SES Director, Division of Oncology and Radiopharmaceutical Drugs Products Research
SES Director, Division of Scientific Investigations Staff
SES Director, Division of Anti-infective Drug Products
SES Director, Division of Metabolism and Endocrine Drug Products
SES Director, Division of Surgical-Dental Drug Products
SES* Director, Office of Management
SES* Director, Division of Cardio-Renal Drug Products
SES* Deputy Director for Medical Activities
SES* Director, Division of Biochemistry and Biophysics
SES* Director, Division of OTC Drug Evaluation
SES Director, Division of Neuropharmacological Drugs Products
SES Director, Division of Drug Biology
SES Director, Division of Drug Chemistry
SES Director, Division of Product Quality Control
SES Director, Division of Blood and Blood Products
SES Director, Division of Biologics Evaluation
SES Director, Office of Epidemiology and Biostatistics
SES Deputy Director, Division of Epidemiology and Biostatistics
SES Director, Division of Biometrics
SES Director, Division of Drug and Biological Experience Products
SES Director, Division of Diopharmaceutics

CENTER FOR VETERINARY MEDICINE

SES Director, Center for Veterinary Medicine
SES Deputy Director, Center for Veterinary Medicine
SES Associate, Center for Veterinary Medicine
SES Deputy Director for Scientific Evaluation
SES Director, Division of Therapeutic Drugs for Non-Food Animals
SES Associate Director for Human Food Safety
SES Associate Director for Surveillance and Compliance

SES Associate Director for Research
SES Director, Division of Veterinary Medical Research
SES Associate Director for Voluntary Compliance and Operations
SES Director, Division of Biometrics and Production Drugs
SES Director, Division of Therapeutic Drugs for Food Animals
SES Director, Division of Drug Manufacturing and Controls

CENTER FOR DEVICES AND RADIOLOGICAL HEALTH

SES Director, Office of Device Evaluation
SES Associate Director for Standards
SES Associate Director for Compliance
0-8 Director, Center for Devices and Radiological Health
SES Deputy Director, Center for Devices and Radiological Health

NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH

SES Director, National Center for Toxicological Research
SES Director, Division of Biometry
SES Associate Director for Research
SES Deputy Director, National Center for Toxicological Research

EXECUTIVE DIRECTOR OF REGIONAL OPERATIONS

SES Executive Director of Regional Operations
SES Deputy Executive Director of Regional Operations
SES Associate Director for Field Support
SES Regional Food and Drug Director, Region I
SES Regional Food and Drug Director, Region II
SES Regional Food and Drug Director, Region III
SES Regional Food and Drug Director, Region IV
SES Regional Food and Drug Director, Region V
SES Regional Food and Drug Director, Region VI
SES Regional Food and Drug Director, Region VII
SES Regional Food and Drug Director, Region VIII
SES Regional Food and Drug Director, Region IX
SES Regional Food and Drug Director, Region X

SOCIAL SECURITY ADMINISTRATION

SES Deputy Commissioner, Operations
SES Deputy Commissioner, Programs and Policy
SES Deputy to Deputy Commissioner, Programs and Policy
SES Associate Commissioner, Policy
SES Associate Commissioner, Assessment
SES Deputy Associate Commissioner, Assessment
SES Deputy Commissioner, Systems
SES Associate Commissioner, Family Assistance
SES Deputy Associate Commissioner, Family Assistance
SES Associate Commissioner, Central Operations
SES Deputy Associate Commissioner, Centers Operations
SES Associate Commissioner, Hearings and Appeals
SES Deputy Associate Commissioner, Hearings and Appeals (Appeals)
SES Deputy Commissioner, Management Support and Assessment
SES Deputy Director, Office of Child Support Enforcement
SES* Associate Deputy Director, OCSE
SES Regional Commissioner, Boston—Region I
SES Regional Commissioner, New York—Region II
SES Regional Commissioner, Philadelphia—Region III
SES Regional Commissioner, Atlanta—Region IV
SES Regional Commissioner, Chicago—Region V
SES Regional Commissioner, Dallas—Region VI
SES Regional Commissioner, Kansas City—Region VII
SES Regional Commissioner, Denver—Region VIII
SES Regional Commissioner, San Francisco—Region IX
SES Regional Commissioner, Seattle—Region X
SES Senior Executive Officer
SES Associate Commissioner, Field Operations
SES Deputy Associate Commissioner for Field Operations
SES Chief Actuary
SES Associate Commissioner, Management, Budget and Personnel
SES Deputy Associate Commissioner, Management, Budget and Personnel
SES Associate Commissioner, System Operation
SES Associate Commissioner, System Integration
SES Director, Office of Refugee Resettlement
SES Associate Commissioner, Governmental Affairs
SES Associate Commissioner for System Requirement
SES Deputy Associate Commissioner for Systems Operations
SES Deputy Associate Commissioner, System Requirements

SES Deputy Associate Commissioner for System Integration
SES* Associate Commissioner, Disability
SES* Deputy Associate Commissioner, Disability
SES* Associate Commissioner, Supplemental Security Income
SES* Deputy Associate Commissioner, Supplemental Security Income
SES* Special Assistant to Deputy Commissioner, Programs and Policy
SES* Associate Commissioner, Retirement and Survivors Insurance
SES* Deputy Commissioner, Systems
SES* Deputy Associate Commissioner, Hearings and Appeals (Management)

AGENCY: DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Positions:

OFFICE OF THE SECRETARY

SES Deputy Undersecretary for Intergovernmental Relations
SES General Deputy Assistant Secretary for Public Affairs
SES Executive Assistant to the Secretary
SES Executive Assistant to the Under Secretary
SES Deputy Under Secretary for Field Coordination
SES Assistant to the Secretary for International Affairs
SES Assistant to the Secretary for Labor Relations

OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING

SES Deputy Assistant Secretary for Multifamily Housing Programs
SES Deputy Assistant Secretary for Single-Family Housing and Mortgagee Activities
SES* General Deputy Assistant Secretary for Public and Indian Housing
SES Deputy Assistant Secretary for Policy and Financial Management, and Administration
SES General Deputy Assistant Secretary for Housing/Deputy Federal Housing Commissioner

OFFICE OF THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT

SES Deputy Assistant Secretary for Program Policy Development and Evaluation
SES Director, Office of Urban Development Action Grants
SES General Deputy Assistant Secretary for Community Planning and Development
SES Deputy Assistant Secretary for Program Management
SES Deputy Assistant Secretary for Field Operations and Environment/Energy

OFFICE OF THE ASSISTANT SECRETARY FOR FAIR HOUSING AND EQUAL OPPORTUNITY

SES Deputy Assistant Secretary for Operations and Management
SES General Deputy Assistant Secretary for Fair Housing and Equal Opportunity
SES Deputy Assistant Secretary for Enforcement and Compliance

OFFICE OF THE ASSISTANT SECRETARY FOR POLICY DEVELOPMENT AND RESEARCH

SES Deputy Assistant Secretary for Housing Studies
SES Deputy Assistant Secretary for Policy Development
SES Deputy Assistant Secretary for Economic Affairs
SES Deputy Assistant Secretary for Urban and Community Studies

OFFICE OF THE GENERAL COUNSEL

SES Deputy General Counsel
SES Deputy General Counsel (Operations)

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

SES Deputy Assistant Secretary for Administration

OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION AND CONGRESSIONAL RELATIONS

SES Deputy Assistant Secretary for Legislation
SES Deputy Assistant Secretary for Congressional Relations

OFFICE OF THE INSPECTOR GENERAL

SES Deputy Inspector General

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

SES Vice President, (Mortgage Finance)
SES Vice President, (Mortgage Backed Securities)
SES Executive Vice President

SOLAR ENERGY AND ENERGY CONSERVATION BANK

SES* Manager

FIELD OFFICES

REGION I

SES Regional Administrator
SES Deputy Regional Administrator

REGION II

SES Regional Administrator

SES Deputy Regional Administrator
SES Area Manager, Newark Area Office

REGION III

SES Regional Administrator
SES Deputy Regional Administrator
SES Manager, Pittsburgh Office

REGION IV

SES Regional Administrator
SES Deputy Regional Administrator
SES Manager, Jacksonville Office

REGION V

SES Regional Administrator
SES Deputy Regional Administrator
SES Manager, Detroit Office
SES Manager, Columbus Office
SES Manager, Minneapolis/St. Paul Office
SES Manager, Indianapolis Office

REGION VI

SES Regional Administrator
SES Deputy Regional Administrator
SES Manager, New Orleans Office
SES Manager, Oklahoma City Office

REGION VII

SES Regional Administrator
SES Deputy Regional Administrator

REGION VIII

SES Regional Administrator
SES Deputy Regional Administrator

REGION IX

SES Regional Administrator
SES Deputy Regional Administrator
SES Manager, Los Angeles Office

REGION X

SES Regional Administrator
SES Deputy Regional Administrator

AGENCY: DEPARTMENT OF THE INTERIOR

Positions:

OFFICE OF THE SECRETARY

SES Principal Deputy Secretary
SES Deputy Under Secretary
SES Deputy Under Secretary
SES Counselor to the Secretary
SES Executive Assistant to the Secretary
SES Special Assistant to the Secretary
SES Assistant to the Secretary/Director of Public Affairs
SES Assistant to the Secretary and Director, Office of Congressional Affairs
SES Deputy Director—Senate
SES Deputy Director—House
SES Director, Office of Small and Disadvantaged Business Utilization
SES Director, Office of Historically Black College and University Programs
SES Director, Office of Youth Programs
SES Assistant to the Secretary
SES Legislative Counsel
SES Special Assistant (Field Representative-San Francisco)
SES Special Assistant (Field Representative-Sacramento)
SES Special Assistant (Field Representative-Denver)
SES Director, Office of Equal Opportunity
SES Assistant Director, Federal Employment Programs
SES Assistant Director, Title VI
AD Commissioner, Delaware River Basin Commission
AD Commissioner, Susquehanna River Basin Commission
AD Federal Co-Chairman, Alaska Land Use Council

OFFICE OF HEARINGS AND APPEALS

SES Director, Office of Hearings and Appeals
SES Member, Board of Surface Mining & Reclamation Appeals
SES Chief, Hearings Division (Indian Probate)
GS-18 Chairman, Board of Contract Appeals
GS-17 Vice Chairman, Board of Contract Appeals

OFFICE OF TERRITORIAL AND INTERNATIONAL AFFAIRS

SES Deputy Assistant Secretary
SES Director, Office of Technical Assistance
GS-18 High Commissioner of the Trust Territories

OFFICE OF INSPECTOR GENERAL

SES Assistant Inspector General—Audit
SES Assistant Inspector General—Investigations

OFFICE OF THE SOLICITOR

SES Deputy Solicitor
SES Special Assistant to the Solicitor
SES Associate Solicitor—Audit and Investigation
SES Associate Solicitor—Energy & Resources
SES Associate Solicitor—General Law
SES Associate Solicitor—Conservation & Wildlife
SES Associate Solictor—Indian Affairs
SES Associate Solicitor—Surface Mining
SES Regional Solicitor—Portland
SES Regional Solicitor—Anchorage
SES Regional Solicitor—Denver
SES Regional Solicitor—Sacramento
SES Regional Solicitor—Boston
SES Regional Solicitor—Tulsa
SES Regional Solicitor—Atlanta

Office of the Assistant Secretary for Fish and Wildlife and Parks

SES Deputy Assistant Secretary
SES Special Assistant to the Assistant Secretary—FWP (Alaska)
SES Staff Assistant

U.S. Fish and Wildlife Service

SES Deputy Director
SES Associate Director, Wildlife Resources
SES Associate Director, Habitat Resources
SES Associate Director, Research and Development
SES Associate Director, Federal Assistance
SES Associate Director, Fishery Resources
SES Assistant Director for Administration
SES Assistant Director, Planning and Budget
SES Regional Director, Portland
SES Regional Director, Twin Cities
SES Regional Director, Atlanta
SES Regional Director, Boston
SES Regional Director, Anchorage
SES Regional Director, Denver
SES Regional Director, Albuquerque

National Park Service

SES Director
SES Deputy Director
SES Assistant Director—Legislative and Congressional Affairs
SES Associate Director—Natural Resource
SES Associate Director—Park Operations
SES Associate Director—Cultural Resources
SES Associate Director—Planning and Development
SES Senior Scientist
SES Director, National Capital Region
SES Regional Director, Seattle
SES Regional Director, Atlanta
SES Regional Director, Philadelphia
SES Regional Director, Omaha
SES Regional Director, Alaska
SES Regional Director, Boston
SES Regional Director, Santa Fe
SES Regional Director, San Francisco
SES Regional Director, Denver

Office of the Assistant Secretary for Water and Science

SES Deputy Assistant Secretary
SES Staff Assistant to Assistant Secretary
SES Deputy Assistant Secretary
SES Staff Assistant—Economics

Bureau of Reclamation

SES Special Assistant to the Commissioner
SES Assistant Commissioner, Planning and Operations
SES Assistant Commissioner, Administration
SES Chief, Office of Power
SES Special Assistant to Commissioner
SES Assistant Commissioner, Engineering
SES Regional Director, Lower Colorado (Boulder City)
SES Regional Director, Mid-Pacific (Sacramento)
SES Regional Director, Pacific Northwest (Boise)
SES Regional Director, Lower Missouri (Denver)
SES Regional Director, Upper Colorado (Salt Lake City)
SES Regional Director, Southwest (Amarillo)
SES Regional Director, Upper Missouri (Billings)

Bureau of Mines

SES Deputy Director
SES Chief Staff Officer
SES Assistant Director, Mining Research
SES Assistant Director, Minerals Information
SES Assistant Director, Planning and Budget
SES Assistant Director, Management Services
SES Assistant Director, Minerals Data Analysis
SES Assistant Director, Minerals and Materials Research

U.S. Geological Survey

SES Associate Director
SES Assistant Director, Research
SES Assistant Director, Engineering Geology
SES Assistant Director for Information Systems
SES Assistant Director, Administration
SES Assistant Director for Programs
SES Assistant Director, Intergovernmental Affairs

Office of the Assistant Secretary for Land and Minerals Management

SES Deputy Assistant Secretary
SES Deputy Assistant Secretary
SES Staff Assistant to the Assistant Secretary

Minerals Management Service

SES Director
SES Associate Director for Royalty Management
SES Associate Director for Offshore Minerals
SES Assistant Director for Administration
SES Assistant Director for Program Review
SES Assistant to the Director for Offshore Rules & Regulations
SES Regional Manager, Gulf of Mexico
SES Regional Manager, Pacific OCS Region
SES Regional Manager, Atlantic OCS Region

SES Regional Manager, Alaska

OFFICE OF SURFACE MINING

SES Deputy Director
SES Assistant Director for Technical Standards & Research
SES Assistant Director for Program Operations and Inspection
SES Assistant Director for Budget and Administration

BUREAU OF LAND MANAGEMENT

SES Associate Director
SES Deputy Director—Energy and Mineral Resources
SES Assistant to the Deputy Director—Energy and Mineral Resources
SES Deputy Director—Lands and Renewable Resources
SES Deputy Director Management Services
SES Assistant Director for Administration
SES Assistant Director—Technical Services
SES Assistant Director—Renewable Resources
SES Assistant Director—Land Resources
SES Assistant Director—Solid Leasable Minerals
SES Chief, Planning & Environmental Coordination
SES Assistant Director—Fluid Leasable Minerals
SES Associate Deputy Director—Energy & Mineral Resources/Assistant Director—Resources/Minerals Law
SES State Director—Eastern States
SES State Director—Utah
SES State Director—Wyoming
SES State Director—Montana
SES State Director—Colorado
SES State Director—California
SES State Director—Alaska
SES State Director—Oregon
SES State Director—Arizona
SES State Director—New Mexico
SES State Director—Idaho
SES State Director—Nevada
SES Director, Denver Service Center (2)

OFFICE OF THE ASSISTANT SECRETARY FOR POLICY, BUDGET AND ADMINISTRATION

SES Deputy Assistant Secretary (3)
SES Director, Office of Aircraft Services
SES Special Assistant to the Assistant Secretary
SES Director, Office of Acquisition and Property Management
SES Chief, Division of Acquisition and Grants
SES Director, Office of Information Resources Management
SES Deputy Director, Office of Information Resources Management
SES Director, Office of Environmental Project Review
SES Director, Office of Administrative Services
SES Director, Office of Budget
SES Deputy Director, Office of Budget
SES Chief, Division of Budget Operations (A)
SES Chief, Division of Budget Operations (B)
SES Director, Office of Policy Analysis
SES Deputy Director, Office of Policy Analysis
SES Assistant Director for Economics
SES Assistant Director for Studies
SES Director Office of Personnel
SES Deputy, Director, Office of Personnel
SES Director, Office of Financial Management
SES Deputy Director, Office of Financial Management

BUREAU OF INDIAN AFFAIRS

SES Deputy Assistant Secretary (Operations)
SES Director—Indian Services
SES Director of Trust Responsibilities
SES Executive Management Officer
SES Director of Indian Education Programs
SES Director, Office of Data System
SES Deputy Director of Indian Education Programs (Comptroller)
SES Assistant Director of Administration (Financial Management)
SES Area Director, Muskogee
SES Area Director, Anadarko
SES Area Director, Navajo
SES Area Director, Albuquerque
SES Area Director, Portland
SES Area Director, Juneau
SES Area Director, Minneapolis
SES Area Director, Eastern Area
SES Area Director, Phoenix
SES Area Director, Aberdeen
SES Area Director, Billings
SES Area Director, Sacramento

AGENCY: DEPARTMENT OF JUSTICE

Positions:

OFFICE OF THE ATTORNEY GENERAL

SES Counselor to the Attorney General
SES Special Counsel to the Attorney General (Vacant)

OFFICE OF THE DEPUTY ATTORNEY GENERAL

SES All Associate Deputy Attorneys General (4) (2 Vacant)

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

SES All Deputy Associate Attorneys General (4)
SES* Assistant Associate Attorney General

OFFICE OF THE SOLICITOR GENERAL

SES All Deputy Solicitors General (5)

LEGAL DIVISIONS: ANTITRUST, CIVIL, CIVIL RIGHTS, CRIMINAL, LAND AND NATURAL RESOURCES, AND TAX

SES All Deputy Assistant Attorneys General in Legal Divisions (21)
SES Special Counsel to the Asst. Attorney General, Tax Division
SES Director of Operations, Antitrust Division
SES Director, Economic Policy, Antitrust Division
SES Chief, Organized Crime and Racketeering Section, Criminal Division

OFFICE OF LEGAL COUNSEL

SES All Deputy Assistant Attorneys General (3)

OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS

No section 207(d)(1)(C) designations.

JUSTICE MANAGEMENT DIVISION

SES Assistant Attorney General for Administration
SES All Deputy Assistant Attorneys General (4)
SES Senior Management Counsel
SES Staff Directors (10)
SES Deputy Director, Audit Staff

OFFICE OF PUBLIC AFFAIRS

SES Director

OFFICE OF THE PARDON ATTORNEY

No section 207(d)(1)(C) designations.

UNITED STATES PAROLE COMMISSION

GS-18 All Commissioners (9)

UNITED STATES MARSHALS SERVICE

SES Director
SES Deputy Director
SES Assistant Director for Operations
SES Assistant Director for Administration

UNITED STATES ATTORNEYS

SES All United States Attorneys (89)

DRUG ENFORCEMENT ADMINISTRATION

GS-18 All Assistant Administrators (3)
GS-17 All Deputy Assistant Administrators (8)

FEDERAL BUREAU OF INVESTIGATION

GS-18 Executive Assistant Directors (3) (1 Vacant)
GS-18 All Assistant Directors (12)
GS-17 All Inspectors/Deputy Assistant Directors (18)
GS-18 or GS-17 All Special Agents in Charge of Field Offices above GS-16 (25)
GS-17 Special Assistant to the Director

IMMIGRATION AND NATURALIZATION SERVICE

SES Deputy Commissioner
SES All Associate Commissioners (4)
SES All Regional Commissioners (4)
SES General Counsel
SES* Executive Associate Commissioner

BUREAU OF PRISONS

SES All Assistant Directors (2)
SES All Regional Directors (5)
SES Associate Commissioner for Prison Industries
SES Wardens (13)
SES Deputy Associate Commissioner/Secretary for Prison Industries
SES Deputy Associate Commissioner for Prison Industries
SES General Counsel
SES Director, National Institute of Corrections

COMMUNITY RELATIONS SERVICE

OFFICE OF JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS

SES Comptroller
SES General Counsel

NATIONAL INSTITUTE OF JUSTICE

SES Assistant Director, Office of Development Testing and Dissemination
SES Assistant Director, Office of Research Programs

OFFICE OF JUVENILE AND DELINQUENCY PREVENTION

SES Deputy Administrator

BUREAU OF JUSTICE STATISTICS

SES Deputy Director

OFFICE OF LEGAL POLICY

SES Deputy Assistant Attorneys General (3)

OFFICE OF INTELLIGENCE POLICY REVIEW

SES Counsel for Intelligence Policy
SES Deputy Counsel for Intelligence Policy
SES Deputy Counsel for Intelligence Operations

FOREIGN CLAIMS SETTLEMENT COMMISSION

SES General Counsel

AGENCY: DEPARTMENT OF LABOR

Positions:

OFFICE OF THE INSPECTOR GENERAL (OIG)

SES Deputy Inspector General
SES Assistant Inspector General for Investigations
SES Assistant Inspector General for Audit
SES Deputy Assistant Inspector General for Audit
SES Assistant Inspector General for Resource Management and Legislative Assessment

WOMEN'S BUREAU

GS-17 Director
SES Deputy Director

OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATIVE AFFAIRS

No section 207 (d)(1)(C).

OFFICE OF THE ASSISTANT SECRETARY, ADMINISTRATION AND MANAGEMENT

SES Deputy Assistant Secretary
SES Director, Office of Procurement and Grants Management
SES Comptroller for the Department
SES Deputy Comptroller

OFFICE OF ADMINISTRATIVE LAW JUDGES (ALJ)

No section 207(d)(1)(C) designations.

OFFICE OF THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS (LMSA)

SES Deputy Assistant Secretary for Management and Services
SES Deputy Assistant Secretary for Program Operations
SES Administrator for Pension and Welfare Benefit Programs (PWBP)
SES Deputy Administrator for Pension and Welfare Benefit Programs (PWBP)
SES Director, Office of Labor-Management Standards Enforcement (LMSE)

OFFICE OF THE ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

SES Deputy Assistant Secretary for Occupational Safety and Health Administration
SES Director, Policy Analysis, Integration and Evaluation
SES Director, Federal Compliance and State Programs
SES Director, Safety Standards Programs
SES Director, Health Standards Programs
SES Director, Technical Support, TECFAP

OFFICE OF THE ASSISTANT SECRETARY FOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)

SES Deputy Assistant Secretary for Mine Safety and Health Administration
SES Administrator for Metal and Nonmetal Mine Safety and Health
SES Deputy Administrator for Metal and Nonmetal Mine Safety and Health
SES Administrator for Coal Mine Safety and Health
SES Deputy Administrator for Coal
SES Director of Technical Support
SES Director of Educational Policy and Development
SES Chief, Standards, Regulations and Variances

OFFICE OF THE DEPUTY UNDER SECRETARY FOR EMPLOYMENT STANDARDS ADMINISTRATION (ESA)

SES Deputy Under Secretary for Employment Standards
SES Associate Deputy Under Secretary for Employment Standards
SES Director, Office of Federal Contract Compliance Programs (OFCCP)
SES Deputy Director, OFCCP
SES Deputy Administrator, Wage and Hour Division (WH)
SES Director, Office of Workers' Compensation Programs (OWCP)
SES Deputy Director, OWCP for Operations

BUREAU OF LABOR STATISTICS (BLS)

SES Deputy Commissioner For Administration and Internal Operations

OFFICE OF THE SOLICITOR OF LABOR

SES Deputy Solicitor
SES Deputy Solicitor for Regional Operations

OFFICE OF THE ASSISTANT SECRETARY EMPLOYMENT AND TRAINING ADMINISTRATION (ETA)

SES Associate Assistant Secretary, ETA
SES Administrator, Office of Strategic Planning and Policy Development (OSPPD)
SES Deputy Administrator, Office of Strategic Planning and Policy Development (OSPPD)
SES Director, Office of Research and Evaluation, (OSPPD)
SES Administrator, Office of Employment Security (OES)
SES Administrator, Office of Comprehensive Employment and Training (OCET)
SES Deputy Administrator, Office of Comprehensive Employment and Training (OCET)
SES Administrator, Office of Financial Control and Management Systems (OFCMS)

OFFICE OF THE DEPUTY UNDER SECRETARY INTERNATIONAL LABOR AFFAIRS (ILAB)

SES Deputy Under Secretary for International Labor Affairs

SES Associate Deputy Under Secretary for International Affairs

Office of the Assistant Secretary for Policy (ASP)

SES Deputy Assistant Secretary for Policy, Evaluation and Research
SES Deputy Assistant Secretary for Economic Policy and Research

National Commission for Employment Policy (NCEP)

GS-18 Director

President's Committee on Employment of the Handicapped (PCEH)

SES Executive Director
SES Deputy Executive Director

Office of the Assistant Secretary for Veteran's Employment

SES Deputy Assistant Secretary

AGENCY: DEPARTMENT OF STATE

Positions:

FEMC Executive Asst to Secretary, S
FEMC* Sa to Sec & Coord Int'l Lab Aff, S
FEMC* Sa to Sec. & Exec Sec of Dept., S/S
FEMC* Mem, Foreign Policy Plan Council, S/P
FEMC Exec Asst to Deputy Secretary, D
FEMC Office Director, M/CT
FEMC* Deputy to the Under Secretary, P
FEMC* Deputy Coordinator, T/CIP
FEMC* Deputy Under Secretary for Economic Affairs, E
FEMC* Executive Assistant, M
FEMC Dir of Management Operations, M/MO
FEMC Dep Dir of Mgmt Operations, M/MO
FEMC* Dep Dir of Mgmt Operations, M/MO
FEMC Dep Dir of Mgmt Operations, M/MO
FEMC* Program Director, M/OFM
FEMC Deputy Inspector General, S/IG
FEMC Deputy Inspector General, S/IG
FEMC Director Political Military, PM/OD
FEMC United States Representative, PM/START
FEMC* United States Representative, PM/CDE
FEMC* Deputy Assistant Secretary, PM/AS
FEMC Medical Director, M/MED
FEMC Deputy Assistant Secretary, INM
FEMC* Deputy Assistant Secretary, RP/MGT
FEMC Deputy Assistant Secretary, EB
FEMC Deputy Assistant Secretary, EB/TDC
FEMC Deputy Assistant Secretary, EB/IFD
FEMC Deputy Assistant Secretary, EB/IEP
FEMC Deputy Assistant Secretary, INR
FEMC* Deputy Assistant Secretary, INR/CA
FEMC Deputy Assistant Secretary, INR/C
FEMC Deputy Assistant Secretary, H
FEMC Deputy Assistant Secretary, PA
FEMC Deputy Assistant Secretary, ARA
FEMC Deputy Assistant Secretary, ARA
FEMC* Deputy Assistant Secretary, ARA
FEMC Dep US Representative, ARA/USOAS
FEMC Deputy Assistant Secretary, EUR
FEMC Deputy Assistant Secretary, EUR
FEMC Deputy Assistant Secretary, EUR
FEMC Deputy Assistant Secretary, EUR
FEMC Deputy Assistant Secretary, EAP
FEMC Deputy Assistant Secretary, EAP
FEMC Deputy Assistant Secretary, EAP
FEMC Deputy Assistant Secretary, EAP
FEMC Deputy Assistant Secretary, NEA
FEMC Deputy Assistant Secretary, NEA
FEMC Deputy Assistant Secretary, NEA
FEMC Deputy Assistant Secretary, NEA
FEMC Deputy Assistant Secretary, AF
FEMC Deputy Assistant Secretary, AF
FEMC Deputy Assistant Secretary, AF
AD00*United States Representative, USUN
AD00* Deputy U.S. Representative, USUN
AD00* United States Representative USUN
AD00* Alternate Representative of USA Spec Pol Aff UN, USUN
AD00* United States Representative, USUN
AD00* United States Representative, USUN
AD00* United States Representative, USUN
AD07* United States Representative, USUN
FEMC Dep US Representative, USUN
FEMC Deputy Assistant Secretary IO
FEMC Deputy Assistant Secretary IO
FEMC Deputy Assistant Secretary,A/CDC
FEMC* Deputy Assistant Secretary, A/FBO
FEMC Director Assistant Secretary, DGP/PER
FEMC Deputy Assistant Secretary, DGP/PER
FEMC* Deputy Assistant Secretary, DGP/PER
FEMC Deputy Assistant Secretary, A/OPR
FEMC Deputy Assistant Secretary, A/SY
FEMC Director Foreign Service Inst, M/FSI
FEMC Deputy Assistant Secretary, A/OC
FEMC Deputy Assistant Secretary, CA
FEMC Deputy Assistant Secretary, CA/PPT

FEMC* Deputy Assistant Secretary, CA/VO
FEMC Deputy Assistant Secretary, CA/OCS
FEMC Deputy Chief of Mission, Buenos Aires
FEMC principal Officer, Rio De Janeiro
FEMC Principal Officer, Sao Paulo
FEMC Deputy Chief of Mission, Bogota
FEMC Principal Officer, Havana
FEMC* Charge d'Affaires, St. Georges
FEMC* Deputy Chief of Mission, Kingston
FEMC Deputy Chief of Mission, Mexico D.F
FEMC Deputy Chief of Mission, Panama
FEMC Deputy Chief of Mission, Lima
FEMC Deputy Chief of Mission, Caracas
FEMC Deputy Chief of Mission, Vienna
FEMC Dep US Representative, UNVIE Vienna
FEMC United States Representative, MBFR Vienna
FEMC Dep US Representative, MBFR Vienna
FEMC Deputy Chief of Mission, Brussels
FEMC Deputy Chief of Mission, Brussels-EC
FEMC Deputy Chief of Mission, Brussels NTO
FEMC United States Representative, Brussels NTO
FEMC Deputy Chief of Mission, Athens
FEMC United States Representative, Montreal
FEMC Deputy Chief of Mission, Ottawa
FEMC Principal Officer, Montreal
FEMC Principal Officer, Toronto
FEMC Deputy Chief of Mission, London
FEMC Deputy Chief of Mission, Paris
FEMC Deputy Chief of Mission, OECD Paris
FEMC United States Representative, OECD Paris
FEMC United States Representative, UNESCO PRS
FEMC Deputy Chief of Mission, Bonn
FEMC* Assistant Chief of Mission, Berlin
FEMC Principal Officer, Frankfurt
FEMC Principal Officer, Munich
FEMC Deputy Chief of Mission, Rome
FEMC Principal Officer, Milan
FEMC Principal Officer, Naples
FEMC* United States Representative, USM FAO Rome
FEMC* Deputy U.S. Representative, USM FAO Rome
FEMC* Charge d'Affaires, Warsaw
FEMC Deputy Chief of Mission, Madrid
FEMC Deputy Chief of Mission, Stockholm
FEMC United States Representative, (TNF) Geneva
FEMC Dep US Representative, US MIS GEN
FEMC United States Representative, US MIS GEN
FEMC Deputy Chief of Mission, Ankara
FEMC Principal Officer, Istanbul
FEMC Deputy Chief of Mission, Moscow
FEMC Principal Officer, Hong Kong
FEMC Deputy Principal Officer, Hong Kong
FEMC Deputy Chief of Mission, Beijing
FEMC* Principal Officer, Guangzhou
FEMC Deputy Chief of Mission, Jakarta
FEMC Deputy Chief of Mission, Canberra
FEMC Principal Officer, Melbourne
FEMC Principal Officer, Sydney
FEMC Deputy Chief of Mission, Tokyo
FEMC Deputy Chief of Mission, Seoul
FEMC Deputy Chief of Mission, Vientiane
FEMC Deputy Chief of Mission, Manila
FEMC* Director, Asian Develop Bank, ASIAN DEV BK
FEMC Deputy Chief of Mission, Bangkok
FEMC Deputy Chief of Mission, Cairo
FEMC Deputy Chief of Mission, New Delhi
FEMC Principal Officer, Bombay
FEMC* Principal Officer, Baghdad
FEMC Deputy Chief of Mission, Tel Aviv
FEMC Principal Officer, Jerusalem
FEMC Deputy Chief of Mission, Beirut
FEMC Deputy Chief of Mission, Islamabad
FEMC Deputy Chief of Mission, Jidda
FEMC* Chief of Mission, Riyadh—USLO
FEMC Deputy Chief of Mission, Kinshasa
FEMC* Charge d'Affaires, Addis, Ababa
FEMC Deputy Chief of Mission, Nairobi
FEMC Deputy Chief of Mission, Lagos
ADOO Commissioner, IJC
SROO Commissioner Intl Joint Comm, IJC

AGENCY: DEPARTMENT OF TRANSPORTATION

Positions:

OFFICE OF THE SECRETARY OF TRANSPORTATION

SES Deputy General Counsel
SES Deputy Assistant Secretary for Planning and Policy Analysis
SES Deputy Assistant Secretary for Policy and Program Development
SES Deputy Assistant Secretary for Budget and Programs
SES Deputy Assistant Secretary for Governmental Affairs
SES Assistant Secretary for Administration
SES Deputy Assistant Secretary for Administration
SES Director, Office of Civil Rights

OFFICE OF THE INSPECTOR GENERAL

SES Assistant Inspector General for Auditing, Office of the Secretary
SES* Deputy Assistant Inspector General for Auditing

SES* Director, Office of Surface Transportation Programs, Office of the Assistant Inspector General for Auditing

SES* Director, Office Aviation, Marine and Research Programs, Office of the Inspector General for Auditing

SES Director, Office of DOT-Wide Programs, Office of the Secretary

SES Assistant Inspector General for Investigations, Office of the Secretary

SES Assistant Inspector General for Policy, Planning and Resources, Office of the Secretary

UNITED STATES COAST GUARD

0-7/0-8 Chief Counsel (Rear Admiral)

SES Deputy Chief Counsel

0-7/0-8 Chief of Staff (Rear Admiral)

0-7/0-8 Chief, Office of Boating, Public and Consumer Affairs (Rear Admiral)

0-7/0-8 Comptroller (Rear Admiral)

0-7/0-8 Chief, Office of Engineering (Rear Admiral)

0-7/0-8 Chief, Office of Marine Environment and Systems (Rear Admiral)

0-7/0-8 Chief, Office of Merchant Marine Safety (Rear Admiral)

0-7/0-8 Chief, Office of Navigation (Rear Admiral)

0-7/0-8 Chief, Office of Command, Control and Communication (Rear Admiral)

0-7/0-8 Chief, Office of Operations (Rear Admiral)

0-7/0-8 Chief, Office of Research and Development (Rear Admiral)

0-7/0-8 District Commanders (Rear Admirals) (10)

FEDERAL AVIATION ADMINISTRATION

SES Associate Administrator for Administration

SES Deputy Associate Administrator for Administration

SES Associate Administrator for Airports

SES* Associate Administrator for Development and Logistics

SES* Deputy Associate Administrators for Development and Logistics (2)

SES Associate Administrator for Aviation Standards

SES Deputy Associate Administrator for Aviation Standards

SES Associate Administrator for Policy and International Aviation

SES Federal Air Surgeon

SES Deputy Federal Air Surgeon

SES Chief Counsel

SES Deputy Chief Counsel

SES Director, Eastern Region (New York)

SES Deputy Director, Eastern Region (New York)

SES Deputy Director, New England Region (Boston)

SES Director, New England Region (Boston)

SES Director, Southern Region (Atlanta)

SES Deputy Director, Southern Region (Atlanta)

SES Director, Southwest Region (Fort Worth)

SES Deputy Director, Southwest Region (Fort Worth)

SES Director, Central Region (Kansas City)

SES Deputy Director, Central Region (Kansas City)

SES Director, Great Lakes Region (Chicago)

SES Deputy Director, Great Lakes Region (Chicago)

SES Director, Western-Pacific Region (Los Angeles)

SES Deputy Director, Western-Pacific Region (Los Angeles)

SES Director, Northwest Mountain Region (Seattle)

SES Deputy Director, Northwest Mountain Region (Seattle)

SES Director, Alaska Region (Anchorage)

SES Deputy Director, Alaska Region (Anchorage)

SES Director, Europe-Africa-Middle East Office

FEDERAL HIGHWAY ADMINISTRATION

SES Deputy Administrator

SES Associate Administrator for Planning and Policy Development

SES Associate Administrator for Research Development and Technology

SES Associate Administrator for Right-Of-Way and Environment

SES Associate Administrator for Engineering and Operations

SES Associate Administrator for Safety, Traffic Engineering and Motor Carriers

SES Associate Administrator for Administration

SES Chief Counsel

SES Regional Federal Highway Administrators (9)

SES Deputy Administrator

SES Executive Director

FEDERAL RAILROAD ADMINISTRATION

SES Deputy Administrator

SES Associate Administrator for Administration

SES Chief Counsel

SES Associate Administrator for Federal Assistance

SES Deputy Associate Administrator for Federal Assistance

SES Associate Administrator for Intercity Programs

SES Deputy Associate Administrator for Intercity Programs

SES Associate Administrator for Research and Development
SES Associate Administrator for Policy
SES Associate Administrator for Safety
SES Deputy Associate Administrator for Safety
SES General Manager, Alaska Railroad
SES* Attorney-Advisor

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

SES Deputy Administrator
SES Chief Counsel
SES Associate Administrator for Rulemaking
SES Deputy Associate Administrator for Rulemaking
SES Associate Administrator for Plans and Programs
SES Associate Administrator for Traffic Safety Programs
SES* Deputy Associate Administrator for Traffic Safety Programs
SES Associate Administrator for Research and Development
SES Associate Administrator for Enforcement
SES Associate Administrator for Administration

URBAN MASS TRANSPORTATION ADMINISTRATION

SES Deputy Administrator
SES Executive Director
SES Associate Administrator for Administration
SES Chief Counsel
SES Director, Office of Financial Management
SES Associate Administrator for Technical Assistance
SES Associate Administrator for Budget and Policy
SES Associate Administrator for Grants Management

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

SES General Counsel
SES Associate Administrator for Resident Manager

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

SES Administrator
SES Chief Counsel
SES Director, Materials Transportation Bureau
SES Director, Transportation Systems Center
SES Deputy Director, Transportation Systems Center

MARITIME ADMINISTRATION

SES Deputy Administrator
SES Deputy Administrator for Inland Waterways and Great Lakes
SES Chief Counsel
SES Deputy Chief Counsel
SES Associate Administrator for Policy and Administration
SES Associate Administrator for Maritime Aids
SES Deputy Associate Administrator for Maritime Aids (Trade), Office of the Associate Administrator for Maritime Aids
SES Deputy Associate Administrator for Maritime Aids (Finance), Office of the Associate Administrator for Maritime Aids
SES Associate Administrator for Shipbuilding and Ship Operations
SES Director, Office of Ship Construction, Office of the Associate Administrator for Shipbuilding and Ship Operations
SES Director, Office of Shipbuilding Costs, Office of the Associate Administrator for Shipbuilding and Ship Operations
SES Director, Office of Ship Operations, Office of the Associate Administrator for Shipbuilding and Ship Operations
SES Associate Administrator for Marketing and Domestic Enterprise
SES Associate Administrator for Research and Development
SES Superintendent, Merchant Marine Academy

AGENCY: DEPARTMENT OF THE TREASURY

Positions:

OFFICE OF THE ASSISTANT SECRETARY FOR DOMESTIC FINANCE

SES Deputy Assistant Secretary, State and Local Finance
SES Deputy Assistant Secretary, Federal Finance

OFFICE OF THE ASSISTANT SECRETARY FOR INTERNATIONAL MONETARY AFFAIRS

SES Deputy Assistant Secretary for International Monetary Affairs
SES Deputy Assistant Secretary for Developing Nations Finance
SES Deputy Assistant Secretary, Trade and Investment Policy

OFFICE OF THE ASSISTANT SECRETARY FOR TAX POLICY

SES Deputy Assistant Secretary, Tax Policy
SES Deputy Assistant Secretary, Tax Policy and Director, Office of Tax Analysis

OFFICE OF THE FISCAL ASSISTANT SECRETARY

SES Assistant Secretary

OFFICE OF THE ASSISTANT SECRETARY FOR ELECTRONIC SYSTEMS AND INFORMATION TECHNOLOGY

SES Assistant Secretary

OFFICE OF THE ASSISTANT SECRETARY FOR CONSUMER LIAISON AND BUSINESS AFFAIRS

SES Assistant Secretary

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

SES Assistant Secretary

SES* Deputy Assistant Secretary for Operations

TREASURER OF THE UNITED STATES

GS-18 Treasurer and National Savings Bond Director, Office of the Secretary

SES Deputy Treasurer

OFFICE OF REVENUE SHARING

SES Director

COMPTROLLER OF THE CURRENCY

SES Senior Advisor to the Comptroller

SES Deputy Comptroller, Bank Organization and Structure

SES Deputy Comptroller, Industry and Public Affairs

SES Senior Deputy Comptroller for National Operations

SES Senior Deputy Comptroller for Policy and Planning

SES Senior Deputy Comptroller for Bank Supervision

CUSTOMS SERVICE

SES Commissioner

SES Deputy Commissioner

SES Deputy Commissioner, International Affairs

SES Assistant Commissioner, Enforcement

SES Deputy Assistant Commissioner, Enforcement

SES Director, Office of Investigations

SES Assistant Commissioner, Commercial Operations

SES Deputy Assistant Commissioner, Inspection and Control

SES Assistant Commissioner, Inspection and Control

SES Comptroller

SES* Assistant Commissioner, Internal Affairs

BUREAU OF GOVERNMENT FINANCIAL OPERATIONS

SES Commissioner

SES Deputy Commissioner

INTERNAL REVENUE SERVICE

SES Deputy Commissioner

SES Associate Commissioner (Data Processing)

SES Associate Commissioner (Operations)

SES Associate Commissioner (Policy and Management)

SES Assistant Commissioner, (Inspection)

SES Regional Commissioner, (C)

SES Regional Commissioner, (MA)

SES Regional Commissioner, (MW)

SES Regional Commissioner, (NA)

SES Regional Commissioner, (SE)

SES Regional Commissioner, (SW)

SES Regional Commissioner, (W)

LEGAL DIVISION

SES Deputy General Counsel, Office of the General Counsel

SES Assistant General Counsel and Director, Tax Legislative Counsel, Office of the General Counsel

SES International Tax Counsel and Director, Office of International Tax Counsel, Office of the General Counsel

SES Chief Counsel, U.S Customs Service

SES Deputy Chief Counsel, U.S. Customs Service

SES Chief Counsel, Comptroller of the Currency

SES Deputy Chief Counsel, Comptroller of the Currency

SES Chief Counsel, Bureau of Alcohol, Tobacco and Firearms

SES Deputy Chief Counsel, Bureau of Alcohol, Tobacco and Firearms

SES Deputy Chief Counsel, Internal Revenue Service

U.S. MINT

GS-18 Director

SES Deputy Director of the Mint

SES Associate Director for Policy and Management

SES Associate Director for Operations

U.S. SAVINGS BONDS DIVISION

No section 207(d)(1)(C) designations.

U.S. SECRET SERVICE

SES Director

SES Deputy Director

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

SES Director

SES Deputy Director/Associate Director (Compliance Operations)

SES Deputy Director/Associate Director (Law Enforcement)

SES Assistant Director, Internal Affairs

BUREAU OF THE PUBLIC DEBT

SES Commissioner of Public Debt

OFFICE OF REVENUE SHARING

SES Director

FEDERAL LAW ENFORCEMENT TRAINING CENTER

No section 207(d)(1)(C) designations.

BUREAU OF ENGRAVING AND PRINTING

SES Director
SES Deputy Director
SES Assistant Director (Administration)
SES Assistant Director (Operations)
SES Assistant Director (Research and Engineering)

AGENCY: ACTION

Positions:

SES Executive Officer
SES Deputy Associate Director for Older Americans Volunteer Program (OAVP)
SES Assistant Director for Administration
SES Deputy Assistant Director for Administration
SES General Counsel
SES Deputy Assistant Director for Volunteer Liaison
SES Assistant Director for Financial Management
SES Deputy Associate Director for VISTA/Service Learning Programs
SES Director, Vietnam Veterans Leadership Program
SES Inspector General
SES Executive Assistant
SES* Deputy General Counsel

AGENCY: ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Positions:

SES General Counsel
SES Executive Director
SES Research Director

AGENCY: ADVISORY COUNCIL ON HISTORIC PRESERVATION

Positions:

SES Executive Director
SES General Counsel

AGENCY: AMERICAN BATTLE MONUMENTS COMMISSION

Positions:

0-8 Secretary

AGENCY: APPALACHIAN REGIONAL COMMISSION

Positions: No section 207(d)(1)(C) designations.

AGENCY: BOARD FOR INTERNATIONAL BROADCASTING

Positions:

SES Executive Director

AGENCY: CENTRAL INTELLIGENCE AGENCY

Positions:

AD Executive Director
AD All Deputy Directors and Associate Deputy Directors of Directorates
AD All Heads of Independent Offices

AGENCY: CIVIL AERONAUTICS BOARD

Positions:

SES Managing Director, Office of Managing Director
SES Director, Office of Congressional, Community & Consumer Affairs
SES Director, Bureau of Domestic Aviation
SES Deputy Director/Associate Director, Legal, Bureau of Domestic Aviation
SES General Counsel, Office of the General Counsel
SES Deputy General Counsel, Office of the General Counsel
SES* Director, Bureau of International Aviation
SES Deputy Director, Bureau of International Aviation

AGENCY: COMMISSION ON CIVIL RIGHTS

Positions:

SES Solicitor
SES Assistant Staff Director for Regional Programs
SES Assistant Staff Director for Administration
SES Assistant Staff Director for Program Planning and Evaluation
SES Acting Assistant Staff Director for Program and Policy Review
SES Assistant Staff Director for Civil Rights Evaluation
SES Assistant Staff Director for Congressional and Public Affairs
SES Deputy Staff Director
SES General Counsel

AGENCY: COMMISSION OF FINE ARTS

Positions: No section 207(d)(1)(C) designations.

AGENCY: COMMODITY FUTURES TRADING COMMISSION

Positions:

SES Executive Director
SES Deputy Executive Director (1)
SES Director, Division of Enforcement
SES Deputy Director, Division of Enforcement (3)
SES Chief Economist, Division of Economic Analysis
SES Deputy Chief Economist, Division of Economic Analysis (1)
SES Director, Division of Trading and Markets
SES Deputy Director, Division of Trading and Markets (1)
SES Deputy General Counsel, Office of General Counsel (3)
SES Associate Director for Market Analysis, Division of Economic Analysis
SES General Counsel
SES Associate General Counsel for Opinions and Review, Office of General Counsel
SES* Associate Director for Surveillance, Division of Economic Analysis
SES* Chief Counsel, Division of Trading and Markets

AGENCY: CONSUMER PRODUCT SAFETY COMMISSION

Positions:

SES General Counsel
SES Deputy General Counsel
SES Executive Director
SES Deputy Executive Director
SES Associate Executive Director for Engineering Sciences
SES Associate Executive Director for Compliance and Administration
SES Associate Executive Director for Administrative Litigation
SES Associate Executive Director for Health Sciences
SES Associate Executive Director for Epidemiology
SES Director, Office of Program Management
SES Director, Office of Budget, Program Planning and Evaluation
SES Senior Staff Officer

AGENCY: COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Positions: No section 207(d)(1)(C) designations.

AGENCY: DISTRICT OF COLUMBIA GOVERNMENT

Positions:

AD Superintendent of Schools
AD President, University of the District of Columbia
AD General Manager, Convention Center

AGENCY: ENVIRONMENTAL PROTECTION AGENCY

Positions:

SES Regional Administrator, Region I
SES Regional Administrator, Region II
SES Regional Administrator, Region III
SES Regional Administrator, Region IV
SES Regional Administrator, Region V
SES Regional Administrator, Region VI
SES Regional Administrator, Region VII
SES Regional Administrator, Region VIII
SES Regional Administrator, Region IX
SES Regional Administrator, Region X
SES Director, Office of Radiation Programs, OAR
SES Director, Office of Water Program Operations, OW
SES Director, Office of Water Regulations and Standards, OW
SES Director, Office of Solid Waste, SWER
SES Director, Office of Drinking Water, OW
SES Director, Office of Pesticides Programs, OPTS
SES Director, Office of Monitoring Systems and Quality Assurance, ORD
SES Director, Office of Environmental Processes and Effects Research, ORD
SES Director, Office of Environmental Engineering and Technology, ORD
SES Director, Office of Toxic Substances, OPTS
SES Deputy General Counsel, OGC
SES Director, Office of Federal Activities, OEA
SES Director, Office of Mobile Sources, OAR
SES Director, Office of Emergency and Remedial Response, SWER
SES Deputy Inspector General, OIA
SES Deputy Inspector General for Investigations, OIG
SES* Deputy Assistant Administrator for Administration and Resource Management, OARM
SES* Senior Enforcement Counsel, OECM
SES* Deputy Assistant Administrator for Policy, Planning and Evaluation, OPPE
SES* Director, Office of Policy Analysis, OPPE
SES* Director, Office of Standards and Regulations, OPPE
SES* Deputy Assistant Administrator for External Affairs, OEA
SES* Director, Office of Congressional Liaison, OEA
SES* Director, Office of Legislative Analysis
SES* Assistant Inspector General for Audits, OIG
SES* Deputy Assistant Administrator for Water, OW
SES* Director, Office of Marine and Estaurine Protection, OW

SES* Director, Office of Ground Water Protection, OW
SES* Director, Office of Water Enforcement and Permits, OW
SES* Deputy Assistant Administrator for Solid Waste and Emergency Response, SWER
SES* Director, Office of Waste Programs Enforcement, SWER
SES* Deputy Assistant Administrator for Air and Radiation, OAR
SES* Director, Office of Air Quality Planning and Standards, OAR
SES* Deputy Assistant Administrator for Pesticides and Toxic Substances, OPTS
SES* Deputy Assistant Administrator for Research and Development, ORD
SES* Deputy Regional Administrator Region I
SES* Director, Office of Health Research, ORD
SES* Deputy Regional Administrator, Region II
SES* Deputy Regional Administrator, Region III
SES* Deputy Regional Administrator, Region IV
SES* Deputy Regional Administrator, Region V
SES* Deputy Regional Administrator, Region VI
SES* Deputy Regional Administrator, Region VII
SES* Deputy Regional Administrator, Region VIII
SES* Deputy Regional Administrator, Region IX
SES* Deputy Regional Administrator, Region X

AGENCY: EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Positions:

SES Deputy General Counsel
SES Associate General Counsel for Trial Services
SES Legal Counsel
SES Director, Office of Program Operations

AGENCY: EXPORT-IMPORT BANK OF THE UNITED STATES

Positions:

GS-18 General Counsel
GS-17 Senior Vice President, Exporter Credits, Guarantees and Insurance
GS-17 Senior Vice President, Direct Credits and Financial Guarantees
GS-17 Special Assistant to the President and Chairman

AGENCY: FARM CREDIT ADMINISTRATION

Positions:

SES Senior Deputy Governor
SES Chief of Staff to the Senior Deputy Governor
SES General Counsel
SES Deputy Governor, Office of Supervision
SES Associate Deputy Governor, Office of Supervision
SES Assistant Deputy Governor, Office of Supervision
SES Deputy Governor and Chief Examiner
SES Associate Deputy Governor, Office of Examination
SES Deputy Governor, Office of Administration
SES* Associate Deputy Governor and Chief Economist, Office Administration
SES Director, Administrative Division
SES Director, Congressional and Public Affairs Division
GS-18 Members of the Federal Farm Credit Board (13)

AGENCY: FEDERAL COMMUNICATIONS COMMISSION

Positions:

SES Managing Director
SES General Counsel
SES Chief Scientist
SES Chief, Mass Media Bureau
SES Chief, Common Carrier Bureau
SES Chief, Private Radio Bureau
SES Chief, Field Operations Bureau
SES Chief, Office of Plans and Policy
SES Deputy Managing Director
SES Deputy General Counsel
SES Deputy Chief, Scientist (Policy)
SES Deputy Chief, Scientist (Operations)
SES Deputy Chief, Mass Media Bureau (Operations)
SES Deputy Chief, Mass Media Bureau (Policy)
SES Deputy Chief, Common Carrier Bureau (Policy)
SES Deputy Chief, Common Carrier Bureau (Operations)
SES Deputy Chief, Private Radio Bureau
SES Deputy Chief, Field Operations Bureau
SES* Deputy Chief, Office of Plans and Policy

AGENCY: FEDERAL DEPOSIT INSURANCE CORPORATION

Positions:

AD-18 Deputy to the Chairman
AD-18 Deputy to the Director
AD-18 General Counsel
AD-18 Director, Division of Bank Supervision
AD-18 Director, Division of Liquidation
AD-18 Director, Division of Research and Strategic Planning

AD-18 Director, Division of Accounting and Corporate Services

AD-17 Associate Director, Division of Bank Supervision, Administration and Corporate Applications

AD-17 Deputy General Counsel, Open Bank Regulation and Supervision, Legal Division

AD-17 Deputy General Counsel, Closed Bank Litigation and Liquidation, Legal Division

AD-17 Associate Director, Division of Bank Supervision, Enforcement and Surveillance

AD-17 Associate Director, Division of Bank Supervision, Planning and Program Development

AD-17 Deputy Director, Regional Offices Coordination, Division of Bank Supervision

AD-17 Regional Director, Atlanta Region, Division of Bank Supervision

AD-17 Regional Director, Boston Region, Division of Bank Supervision

AD-17 Regional Director, Chicago Region, Division of Bank Supervision

AD-17 Regional Director, Columbus Region, Division of Bank Supervision

AD-17 Regional Director, Dallas Region, Division of Bank Supervision

AD-17 Regional Director, Kansas City Region, Division of Bank Supervision

AD-16-(17) Regional Director, Madison Region, Division of Bank Supervision

AD-17 Regional Director, Memphis Region, Division of Bank Supervision

AD-17 Regional Director, Minneapolis Region, Division of Bank Supervision

AD-17 Regional Director, New York Region, Division of Bank Supervision

AD-17 Regional Director, Omaha Region, Division of Bank Supervision

AD-17 Regional Director, Philadelphia Region, Division of Bank Supervision

AD-17 Regional Director, San Francisco Region, Division of Bank Supervision

AD-17 Associate Director, Division of Accounting and Corporate Services, Financial Services

AD-17 Associate Director, Division of Accounting and Corporate Services, Management Information Services

AD-17 Associate Director, Division of Liquidation (Operations)

AD-17 Associate Director, Division of Liquidation (Credit)

AD-16-17 Associate Director, Division of Liquidation (Administration)

AD-17 Assistant Director, Division of Accounting and Corporate Services

AD-16-(17) Director (Liquidation), Southeast Area, Liquidation Office, Division of Liquidation

AD-16-17 Director (Liquidation), Southwest Area Liquidation Office, Division of Liquidation

AD-16-17 Director (Liquidation), Northeast Areal Liquidation Office, Division of Liquidation

AD-15-17 Director (Liquidation), Western Area Liquidation Office, Division of Liquidation

AD-17 Director (Liquidation), Midwest Area Liquidation Office, Division of Liquidation

AD-17* Associate Director, Division of Research and Strategic Planning

AGENCY: FEDERAL ELECTION COMMISSION

Positions:

GS-17 Deputy General Counsel

AGENCY: FEDERAL EMERGENCY MANAGEMENT AGENCY

Positions:

SES* Regional Director, FEMA, Region I, Boston, Massachusetts

SES* Regional Director, FEMA, Region II, New York, New York

SES* Regional Director, FEMA, Region III, Philadelphia, Pennsylvania

SES* Regional Director, FEMA, Region IV, Atlanta, Georgia

SES* Regional Director, FEMA, Region V, Chicago, Illinois

SES* Regional Director, FEMA, Region VI, Denton, Texas

SES* Regional Director, FEMA, Region VII, Kansas City, Missouri

SES* Regional Director, FEMA, Region VIII, Denver, Colorado

SES* Regional Director, FEMA, Region IX, San Francisco, California

SES* Regional Director, FEMA, Region X, Bothell, Washington

SES* Assistant for Special Plans

SES* Deputy Executive Secretary (EMPB)

Office of Executive Administration

SES Director, Public Affairs

SES Executive Deputy Director

SES General Counsel

SES Inspector General

SES Director of Personnel

Federal Insurance Administration

SES* Deputy Administrator

Resource Management and Administration Directorate

SES* Deputy Associate Director

SES Comptroller

SES Director of Personnel

Training And Education

SES Superintendent of National Fire Academy

SES Superintendent, Emergency Management Institute

NATIONAL PREPAREDNESS PROGRAMS DIRECTORATE

SES Deputy Associate Director
SES Assistant Associate for Resources Preparedness
SES Assistant Associate for Government Preparedness
SES Assistant Associate for Mobilization Preparedness

STATE AND LOCAL PROGRAMS AND SUPPORT DIRECTORATE

SES Deputy Associate Director

STATE AND LOCAL PROGRAMS AND SUPPORT DIRECTORATE

SES Assistant Associate Director, Natural & Technological Hazards
SES Assistant Associate Director, Emergency Management Programs
SES Assistant Associate Director, Disaster Assistance Programs
SES Assistant Associate Director, Emergency Operations and Coordination

AGENCY: FEDERAL ENERGY REGULATORY COMMISSION

Positions:

SES Executive Director, Office of the Executive Director
SES Deputy Executive Director, Office of the Executive Director
SES Director, Office of Electric Power Regulation
SES Deputy Director, Office of Electric Power Regulation
SES Director, Office of Pipeline and Producer Regulation
SES Deputy Director, Office of Pipeline and Producer Regulation
SES General Counsel, Office of General Counsel
SES Deputy General Counsel, Office of General Counsel
SES Director, Office of Regulatory Analysis
SES Deputy Director, Office of Regulatory Analysis
SES Chief Accountant, Office of Chief Accountant
SES Deputy Chief Accountant, Office of Chief Accountant
SES Director, Office of Opinions and Review
SES Deputy Director, Office of Opinions and Review

AGENCY: FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Positions:

GS-18 Executive Secretary

AGENCY: FEDERAL HOME LOAN BANK BOARD

Positions:

SES General Counsel
SES Director, Office of District Banks
SES Director, Office of Policy and Economic Research
SES Director, Federal Savings and Loan Insurance Corporation
SES Executive Staff Director
SES Director, Office of Examinations and Supervision
SES Director, Internal Evaluation and Compliance Office
SES* Chief Accountant

AGENCY: FEDERAL HOME LOAN MORTGAGE CORPORATION

Positions:

AD President—Chief Executive Officer
AD Executive Vice President—Chief Financial Officer
AD Executive Vice President—Marketing and Mortgage Operations
AD Senior Vice President—Corporate Information Resources
AD Senior Vice President—Public Affairs
AD Senior Vice President—Regional Operations
AD Vice President and General Counsel
AD Vice President—Controller
AD Treasurer

AGENCY: FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Positions:

SES Deputy Federal Inspector (Washington)
SES Deputy Federal Inspector (Alaska)
SES General Counsel
SES Director, Environment
SES Director, Engineering
SES Director of Administration
SES Director, Construction
SES* Director of Regulatory Affairs

AGENCY: FEDERAL LABOR RELATIONS AUTHORITY

Positions:

GS-18 Chairman, Federal Service Impasses Panel
GS-18 Members of the Federal Service Impasses Panel (6)
GS-18 Member, Foreign Service Labor Relations Board
GS-17 Chief Administrative Law Judge
SES Executive Director/Administrator

SES Solicitor
SES Director, Case Management
SES Chief Counsel
SES Assistant Chief Counsel, Negotiability
SES Assistant Chief Counsel, Representation and Unfair Labor Practices
SES Assistant Chief Counsel, Operations and Arbitration
SES Associate General Counsel
SES Assistant General Counsel for Field Management
SES Assistant General Counsel for Field Management/Legal Policy
SES Assistant General Counsel, Appeals
SES Regional Director, Boston
SES Regional Director, New York
SES Regional Director, Washington
SES Regional Director, Atlanta
SES Regional Director, Chicago
SES Regional Director, Dallas
SES Regional Director, Denver
SES Regional Director, Los Angeles
SES Regional Director, San Francisco
SES Executive Director, Federal Service Impasses Panel

AGENCY: FEDERAL MARITIME COMMISSION

Positions:

SES General Counsel
SES Managing Director
SES Director, Bureau of Tariffs
SES Director, Bureau of Agreements and Trade Monitoring
SES Deputy General Counsel
SES Director, Bureau of Hearing Counsel
SES Secretary
SES Director of Programs
SES Director, Office of Policy Planning and International Affairs
SES Director, Bureau of Investigations
SES* Counsel to the Chairman

AGENCY: FEDERAL MEDIATION AND CONCILIATION SERVICE

Positions:

SES Deputy Director
SES Executive Director
SES Regional Directors(4)

AGENCY: FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Positions:

SES Executive Director
SES General Counsel

AGENCY: FEDERAL RESERVE SYSTEM

Positions:

FRO-I Staff Director for Monetary and Financial Policy
FRO-I Staff Director for Federal Reserve Bank Activities
FRO-I Staff Director for Management
FRO-I General Counsel
FRO-I Director, Division of Research and Statistics
FRO-I Director, Division of International Finance
FRO-I Director, Division of Supervision and Regulation
FRO-II Special Assistant to the Chairman
FRO-II Secretary of the Board
FRO-II Director, Division of Federal Reserve Bank Operations
FRO-II Director, Division of Consumer and Community Affairs
FRO-II Director, Division of Personnel
FRO-II Director, Division of Data Processing
FRO-II Assistant to the Board (for Public Affairs)
FRO-II Assistant to the Board (for Congressional Liaison)
FRO-II Deputy Staff Director (for Monetary and Financial Policy)
FRO-II Deputy Director, Division of Research and Statistics
FRO-II Deputy Director, Division of Data Processing
FRO-II Deputy Director, Division of Banking Supervision and Regulation
FRO-III Senior Associate Director, Division of International Finance
FRO-III* Staff Advisor, Division of International Finance
FRO-III* Associate General Counsel (2)
FRO-III* Assistant to the Board (for Monetary and Financial Policy)
FRO-III Associate Director Division of Research and Statistics
FRO-II* Deputy Associate Director, Division of Research and Statistics
FRO-III* Associate Director, Division of International Finance
FRO-III* Associate Director, Division of International Finance
FRO-III* Associate General Counsel
FRO-III* Associate General Counsel
FRO-III* Assistant to the Board (for Monetary and Financial Policy)

AGENCY: FEDERAL TRADE COMMISSION

Positions:

SES General Counsel
SES Deputy General Counsel
SES Director, Bureau of Competition
SES Deputy Directors, Bureau of Competition
SES Director, Bureau of Consumer Protection
SES Deputy Directors, Bureau of Consumer Protection
SES Director, Bureau of Economics

SES Deputy Directors, Bureau of Economics
SES Executive Director
SES Executive Assistant to the Chairman
SES Director, Office of Congressional Relations

AGENCY: GENERAL ACCOUNTING OFFICE

Positions:

SES Deputy Director for Planning and Reporting (RCED)
SES Director, Resources, Community and Economic Development Division (RCED)
SES Deputy Director for Operations (RCED)
SES Director, Accounting and Financial Management Division (AFMD)
SES Deputy Director, (AFMD)
SES Director, General Government Division (GGD)
SES* Deputy Director for Planning and Reporting (GGD)
SES* Deputy Director for Operations (GGD)
SES Director, Human Resources Division
SES Deputy General Counsel
SES Director, Office of Internal Evaluation
SES* Director, European Branch
SES* Director, Far East Branch
SES Director, Office of Policy
SES Director of Personnel
SES Director, General Services and Controller
SES Deputy Director of Personnel
SES Deputy Director, General Services and Controller
SES Director, Office of Organization and Human Development
SES* Director, Program Evaluation and Methodology Division
SES* Deputy Director, Program Evaluation and Methodology Division
SES Director, Civil Rights Office
SES General Counsel
SES Assistant Comptroller General for Program Evaluation
SES* Assistant Comptroller General
SES Assistant Comptroller General for Planning and Reporting
SES Assistant Comptroller General For Operations
SES Assistant Comptroller General for Huiman Resources
SES Director, Office of Quality Assurance
SES* Special Assistant to the Assistant Comptroller General for Operations (2)
SES* Assistant to the Comptroller General for Retirement Matters
SES* Director, Personnel Systems Development Project
SES* Chief Economist
SES* Deputy Director (OCE)
SES* Director, National Security and International Affairs (NSIAD)
SES* Deputy Director for Planning and Reporting (NSIAD)
SES* Deputy Director for Operations (NSIAD)
SES* Director for Planning (NSIAD)
SES* Director, Information Management and Technology Division (IMTEC)
SES* Deputy Director for Operations (IMTEC)
SES Regional Manager, Los Angeles
SES Regional Manager, Dallas
SES Regional Manager, Philadelphia
SES Regional Manager, Atlanta
SES Regional Manager, Boston
SES Regional Manager, San Francisco
SES Regional Manager, Washington
SES Regional Manager, Denver
SES Regional Manager, New York
SES Regional Manager, Detroit
SES Regional Manager, Cincinnati
SES Regional Manager, Kanas City
SES Regional Manager, Seattle
SES Regional Manager, Chicago
SES Regional Manager, Norfolk

AGENCY: GENERAL SERVICES ADMINISTRATION

Positions:

OFFICE OF THE ADMINISTRATOR

SES Deputy Administrator
SES Association Administrator for Administration
SES* Deputy Associate Administrator for Administration
SES Associate Administrator for Operations
SES Deputy Associate Administrator for Operations
SES Associate Administrator for Policy and Management
SES Deputy Associate Administrator for Policy and Management
SES Director, Office of Small and Disadvantaged Business Utilization
SES* Executive Assistant to the Administrator

OFFICE OF INFORMATION SECURITY OVERSIGHT

SES Director of Information Oversight

OFFICE OF ACQUISITION POLICY

SES Assistant Administrator for Acquisition Policy
SES Deputy Assistant Administrator for Acquisition Policy
SES Director of Acquisition Management and Contract Clearance
SES* Policy Advisor to the Assistant Administrator

OFFICE OF THE COMPTROLLER

SES Comptroller

SES Director of Finance
SES Director of Budget
SES Director of Transportation Audits

OFFICE OF INFORMATION RESOURCES MANAGEMENT (OIRM)

SES Assistant Administrator for Information Resources Management
SES Deputy Assistant Administrator for Information Resources Management
SES Deputy Assistant Administrator for Central Information Services
SES Director of Information Resources Management Policy
SES Director of Information Resources Procurement
SES Director of Network Services
SES Executive Director
SES Director of Regional Information Services
SES Director of Advance Planning
SES Director of GSA Information Systems
SES Director of Office of Information Systems
SES Director of Systems and Technology Assessment
SES* Program Manager, Washington Interagency Telecommunications System

FEDERAL PROPERTY RESOURCES SERVICE (FPRS)

SES Commissioner, Federal Property Resources Service
SES Assistant Comissioner for Real Property
SES Assistant Commissioner for Stockpile Management
SES Assistant Commissioner for Stockpile Transactions

OFFICE OF FEDERAL SUPPLY AND SERVICES (FSS)

SES Assistant Administrator for Federal Supply and Services
SES Deputy Assistant Administrator for Federal Supply and Services
SES Director of Management
SES Director of Policy and Agency Assistance
SES Director of Procurement
SES Director of Contract Management
SES Director of Property Management
SES Director of Transportation

NATIONAL ARCHIVES AND RECORDS SERVICE (NARS)

SES Archivist of the United States
SES Deputy Archivists of the United States
SES Associate Archivist for Managment

PUBLIC BUILDINGS SERVICE (PBS)

SES Commissioner, Public Buildings Service
SES* Assistant Commissioner for Space Management
SES Assistant Commissioner for Buildings Management
SES Assistant Commissioner for Federal Protective Service
SES Assistant Commissioner for Policy and Program Support
SES Assistant Commissioner for Public Utilities
SES* Assistant Commissioner for Design and Construction

OFFICE OF GENERAL COUNSEL (OGC)

SES General Counsel
SES Deputy General Counsel

GSA BOARD OF CONTRACT APPEALS

GSA-18 Chairman of Chief Administrative Judge of Board of Contract Appeals
GS-17 Vice Chairman, Board of Contract Appeals

OFFICE OF THE INSPECTOR GENERAL

SES Deputy Inspector General
SES Assistant Inspector General for Policy, Plans and Management Systems
SES Assistant Inspector General for Auditing
SES Deputy Assistant Inspector General for Auditing
SES Assistant Inspector General for Investigations

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR POLICY AND MANAGEMENT SYSTEMS

SES Director of Oversight
SES Director, Office of Administration Services

REGIONAL OFFICES

SES Regional Administrator, Region 1 (Boston)
SES Deputy Regional Administrator, Region 1 (Boston)
SES* Assistant Regional Administrator for Public Buildings and Real Property, Region 1 (Boston)
SES Regional Administrator, Region 2 (New York)
SES Deputy Regional Administrator, Region 2 (New York)
SES Regional Controller, Region 2 (New York)
SES Assistant Regional Administrator for Public Buildings and Real Property, Region 2 (New York)
SES Assistant Regional Administrator for Federal Supply and Services, Region 2 (New York)
SES Regional Administrator, Region 3 (Philadelphia)
SES Deputy Regional Administrator, Region 3 (Phidadelphia)

SES Assistant Regional Administrator for Public Buildings and Real Property, Region 3 (Philadelphia)
SES Regional Administrator, Region 4 (Atlanta)
SES* Deputy Regional Administrator, Region 4 (Atlanta)
SES Assistant Regional Administrator for Public Buildings and Real Property, Region 4 (Atlanta)
SES Assistant Regional Administrator for Federal Supply and Services, Region 4 (Atlanta)
SES Regional Administrator, Region 5 (Chicago)
SES Deputy Regional Administrator, Region 5 (Chicago)
SES Regional Controller, Region 5 (Chicago)
SES Assistant Regional Administrator for Federal Supply and Services, Region 5 (Chicago)
SES Regional Administrator, Region 6 (Kansas City)
SES Deputy Regional Administrator, Region 6 (Kansas City)
SES Regional Controller, Region 6 (Kansas City)
SES Assistant Regional Administrator for Public Buildings and Real Property, Region 6 (Kansas City)
SES Assistant Regional Administrator for Information Resources Management, Region 6 (Kansas City)
SES Regional Administrator, Region 7 (Fort Worth)
SES Deputy Regional Administrator, Region 7 (Fort Worth)
SES Assistant Regional Administrator for Public Buildings and Real Property, Region 7 (Fort Worth)
SES Assistant Regional Administrator for Federal Supply and Services, Region 7 (Fort Worth)
SES Assistant Regional Administrator for Information Resources Management, Region 7 (Fort Worth)
SES Regional Administrator, Region 8 (Denver)
SES Deputy Regional Administrator, Region 8 (Denver)
SES Assistant Regional Administrator for Public Buildings and Real Property, Region 8 (Denver)
SES Regional Administrator, Region 9 (San Francisco)
SES Deputy Administrator, Region 9 (San Francisco)
SES Assistant Region Administrator for Public Buildings and Real Property, Region 9 (San Francisco)
SES Assistant Regional Administrator for Federal Supply and Services, Region 9 (San Francisco)
SES Assistant Regional Administrator for Information Resources Management, Region 9 (San Francisco)
SES Regional Administrator, Region 10 (Auburn)
SES Deputy Regional Administrator, Region 10 (Auburn)
SES Assistant Regional Administrator for Public Buildings and Real Property, Region 10 (Auburn)
SES Regional Administrator, National Capital Region (Washington, D.C.)
SES Deputy Regional Administrator, National Capital Region (Washington, D.C.)
SES Regional Controller (National Capital Region)
SES Assistant Regional Administrator for Public Buildings and Real Property (National Capital Region)
SES Assistant Regional Administrator for Federal Supply and Services (National Capital Region)
SES Assistant Regional Administrator for Information Resources Management (National Captial Region)

AGENCY: INTER-AMERICAN FOUNDATION

Positions: No section 207(d)(1)(C) designations.

AGENCY: INTERNATIONAL TRADE COMMISSION

Positions:

SES Director, Office of Operations
SES General Counsel
SES Director, Office of Industries
SES Director, Office of Investigations
SES Director, Office of Economics
SES Director, Office of Administration
SES Director, Office of Tariff Affairs and Trade Agreements

AGENCY: INTERSTATE COMMERCE COMMISSION

Positions:

SES Managing Director
SES General Counsel
SES Director, Bureau of Traffic
SES Director, Bureau of Accounts
ES Director, Office of Proceedings
SES Director, Office of Transportation Analysis (OTA)
SES Assistant Managing Director
SES Deputy General Counsel
SES Associate Director, Office of Proceedings
SES Associate Director, Office of Transportation Analysis (OTA)
SES Director, Office Compliance and Consumer Assistance—OCCA
SES Associate Director, Office of Compliance and Consumer Assistance—OCCA
SES Chief of Staff
SES Legislative Counsel

SES * Deputy Director, Bureau of Accounts
SES * Assistant Director, Bureau of Traffic

AGENCY: JAPAN-UNITED STATES FRIENDSHIP COMMISSION

Postions:

SES Executive Director

AGENCY: MERIT SYSTEMS PROTECTION BOARD

Positions:

SES* Executive Assistant to the Chairman
SES* Managing Director
SES* Assistant Managing Director for Management
SES* Associate Assistant Managing Director for Management
SES* Assistant Managing Director for Regional Operations
SES* General Counsel
SES* Deputy General Counsel
SES* Associate General Counsel for Litigation
SES* Legislative Counsel
SES* Director, Office of Appeals Counsel
SES* Associate Director, Office of Appeals Counsel
SES Director, Office of Merit Systems Review and Studies
SES Regional Director, Atlanta
SES Regional Director, Chicago
SES Regional Director, Dallas
SES Regional Director, New York
SES Regional Director, Philadelphia
SES Regional Director, San Francisco
SES Regional Director, Washington, D.C.

AGENCY: NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Positions:

OFFICE OF THE ADMINISTRATOR

SES Associate Deputy Administrator

OFFICE OF THE COMPTROLLER

SES Deputy Comptroller, NASA
SES Comptroller, NASA

OFFICE OF LEGISLATIVE AFFAIRS

SES Assistant Administrator for Legislative Affairs
SES Deputy Assistant Administrator for Legislative Affairs

OFFICE OF THE CHIEF ENGINEER

SES Chief Engineer, NASA
SES Deputy Chief Engineer, NASA

OFFICE OF SPACE SCIENCE AND APPLICATIONS

SES Associate Administrator for Space Science and Applications
SES Deputy Associate Administrator for Space Science and Applications

OFFICE OF GENERAL COUNSEL

SES General Counsel
SES Deputy General Counsel, NASA

OFFICE OF PROCUREMENT

SES Assistant Administrator for Procurement
SES Deputy Assistant Administrator for Procurement

OFFICE OF EXTERNAL RELATIONS

SES Associate Administrator for External Relations
SES Deputy Associate Administrator for External Relations

OFFICE OF SPACE FLIGHT

SES Associate Administrator for Space Flight
SES Deputy Associate Administrator for Space Flight

OFFICE OF MANAGEMENT

SES Associate Administrator for Management
SES Deputy Associate Administrator for Management

OFFICE OF AERONAUTICS AND SPACE TECHNOLOGY

SES Associate Administrator for Aeronautics and Space Technology
SES Deputy Associate Administrator for Aeronautics and Space Technology

OFFICE OF POLICY

SES Associate Administrator for Policy

OFFICE OF CHIEF SCIENTIST

SES Chief Scientist

OFFICE OF SPACE TRACKING AND DATA SYSTEMS

SES Associate Administrator for Space Tracking and Data Systems
SES Deputy Associate Administrator for Space Tracking and Data Systems

OFFICE OF EQUAL OPPORTUNITY PROGRAMS

SES Assistant Administrator for Equal Opportunity Programs
SES Deputy Assistant Administrator for Equal Opportunity Programs

INSPECTOR GENERAL

SES Deputy Inspector General

AMES RESEARCH CENTER

SES Director, NASA Ames Research Center
SES Deputy Director, NASA Ames Research Center

GODDARD SPACE FLIGHT CENTER

SES Director, NASA Goddard Space Flight Center
SES Deputy Director, NASA Goddard Space Flight Center

JOHNSON SPACE CENTER

SES Director, NASA Johnson Space Center
SES Deputy Director, NASA Johnson Space Center

KENNEDY SPACE CENTER

SES Director, NASA Kennedy Space Center
SES Deputy Director, NASA Kennedy Space Center

LANGLEY RESEARCH CENTER

SES Director, NASA Langley Research Center
SES Deputy Director, NASA Langley Research Center

LEWIS RESEARCH CENTER

SES Director, NASA Lewis Research Center
SES Deputy Director, NASA Lewis Research Center

MARSHALL SPACE FLIGHT CENTER

SES Director, NASA Marshall Space Flight Center
SES Deputy Director, NASA Marshall Space Flight Center

NATIONAL SPACE TECHNOLOGY LABORATORIES

SES Manager, National Space Technology Laboratories
SES Deputy Manager, National Space Technology Laboratories

AGENCY: NATIONAL CAPITAL PLANNING COMMISSION

Positions:

SES Executive Director
SES Associate Executive Director for Regional Affairs
SES Associate Executive Director for District of Columbia Affairs
SES General Counsel
SES Assistant Executice Director for Operations

AGENCY: NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Positions:

SES 0-4 Executive Director

AGENCY: NATIONAL CREDIT UNION ADMINISTRATION

Positions:

SES General Counsel
SES Internal Auditor (Director, Internal Audit and Investigation)
SES Regional Directors(6)
SES Deputy General Counsel
SES Director, Division of Information Systems
SES Director, Office of Programs
SES Director, Office of Services

AGENCY: NATIONAL ENDOWMENT FOR THE ARTS

Positions:

SES* Executive Director for Partnership
SES* Deputy Chairman for the Federal Council on the Arts and Humanities
SES* Deputy Chairman for Policy and Planning
SES* Director of Program Coordination
SES* Director of Public Affairs

AGENCY: NATIONAL ENDOWMENT FOR THE HUMANITIES

Positions:

SES Deputy Chairman
SES Assistant Chairman for Institutional Relations
SES Director, Office of Planning and Policy Studies
SES Director, Division of Education Programs
SES* Director of Administration

AGENCY: NATIONAL LABOR RELATIONS BOARD

Positions:

SES Solicitor
SES Executive Secretary
SES Deputy General Counsel
SES Associate General Counsel, Division of Enforcement Litigation

AGENCY: NATIONAL MEDIATION BOARD

Positions:

SES* Executive Secretary

AGENCY: NATIONAL SCIENCE FOUNDATION

Positions:

SES Staff Director, National Science Foundation
SES* Executive Officer, National Science Board
SES Director, Office of Audit and Oversight
SES* Director, Office of Legislative and Public Affairs
SES* Controller, National Science Foundation
SES General Counsel
SES Director, Office of Small Business Research and Development
SES Director, Office of Advanced Scientific Computing
SES Assistant Director for Engineering
SES Assistant Director for Science and Engineering Education
SES Assistant Director for Scientific, Technological and International Affairs
SES Assistant Director for Administration
SES Deputy Assistant Director for Astronomical, Atmospheric, Earth and Ocean Sciences
SES Deputy Assistant Director for Biological, Behavioral and Social Sciences
SES Deputy Assistant Director for Engineering
SES Deputy Assistant Director for Mathematical and Physical Sciences
SES Deputy Assistant Director for Science and Engineering Education
SES Deputy Assistant Director for Scientific, Technological and International Affairs
SES Deputy Assistant Director for Administration

AGENCY: NATIONAL TRANSPORTATION SAFETY BOARD

Positions:

SES Managing Director
SES Deputy Managing Director
SES General Counsel
SES Director, Bureau of Accident Investigation
SES Director, Bureau of Technology
SES Director, Bureau of Administration
SES Director, Bureau of Safety Programs
SES* Director, Bureau of Field Operations

AGENCY: NUCLEAR REGULATORY COMMISSION

Positions:

OFFICE OF THE COMMISSION

GG-18 Executive Assistant to the Chairman

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

SES Executive Director, ACRS
SES Deputy Executive Director, ACRS
SES Assistant Executive Director for Project Review, ACRS

OFFICE OF ADMINISTRATION

SES Director, Office of Administration
SES Deputy Director, Office of Administration
SES Director, Division of Organization & Personnel
SES Director, Division of Contracts
SES Director, Division of Tech Information & Document Control

OFFICE OF RESOURCE MANAGEMENT

SES Controller and Director
SES Deputy Controller and Deputy Director

OFFICE OF THE SECRETARY

SES Secretary of the Commission
SES Assistant Secretary of the Commission

OFFICE OF INSPECTOR AND AUDITOR

SES Director, OIA
SES Deputy Director and Assistant for Audits

OFFICE OF STATE PROGRAMS

SES Director, State Programs

OFFICE OF INVESTIGATIONS

SES Director, Office of Investigations
SES Deputy Director of Investigations

ATOMIC SAFETY AND LICENSING BOARD PANEL

SES Chief Administrative Judge
SES Deputy Chief Administrative Judge (Executive)
GG-17 Deputy Chief Administrative Judge (Technical)

ATOMIC SAFETY AND LICENSING APPEAL PANEL

SES Chairman, ASLAP
SES Vice Chairman, ASLAP
GG-17 Administrative Judge (Legal) ASLAP (3)
GG-17 Administrative Judge (Technical) (2)

OFFICE OF THE GENERAL COUNSEL

SES General Counsel
SES Solicitor, OGC
SES Deputy General Counsel for Dom Lic & Reg
SES Assistant General Counsel for International and Legislative Affairs
SES Assistant General Counsel for Administration and Adjudication

OFFICE OF PUBLIC AFFAIRS

SES Director, Office of Public Affairs
SES Deputy Director, Office of Public Affairs

OFFICE OF CONGRESSIONAL AFFAIRS

SES Director, Office of Congressional Affairs

OFFICE OF POLICY EVALUATION

SES Director, Office of Policy Evaluation
SES A/D for Technical Review, OPE
SES Deputy Director for Special Projects, OPE

EXECUTIVE DIRECTOR FOR OPERATIONS

SES Executive Director for Operations
SES Deputy Executive Director for Operations
SES Assistant for Operations
SES Deputy Executive Director for Regional Operations and Generic Requirements
SES Director, Regional Operations and Generic Requirements Staff

OFFICE OF THE EXECUTIVE LEGAL DIRECTOR

SES Executive Legal Director
SES Deputy Executive Legal Director
SES Director & Chief Counsel Regulations Division
GG-17 Special Assistant to the Executive Legal Director
GG-17* Special Assistant for International Affairs
SES Director/Chief Counsel, Operations and Administration Division
SES Director & Chief Counsel, Hearing Division
SES Assistant Chiefs, Hearing Counsel 4)
SES Deputy Chief, Hearing Counsel, Deputy Director, Hearing Division
SES Director & Chief Counsel, Regional Operations and Enforcement Division

OFFICE OF INTERNATIONAL PROGRAMS

SES Director, Office of International Programs
SES A/D for International Cooperation
SES A/D for Export/Import & International Safeguards

OFFICE OF NUCLEAR REACTOR REGULATION

SES Director, NRR
SES Deputy Director, Office of Nuclear Reactor Regulation
SES Program Director, TMI Program Office
SES Deputy Program Director, TMI Program Office
SES Director, Planning & Program Analysis Staff
SES Director, Division of Licensing
SES Deputy Director, Division of Licensing
SES Assistant Director for Operating Reactors
SES Chief, Operating Reactors Branch 1
SES Chief, Operating Reactors Branch 2
SES Chief, Operating Reactors Branch 3
SES Chief, Operating Reactors Branch 4
SES Assistant Director for Licensing
SES Chief, Licensing Branch 1
SES Chief, Licensing Branch 2
SES Chief, Licensing Branch 3
SES Chief, Licensing Branch 4
SES Chief, Standardization and Special Projects Branch
SES Assistant Director for Safety Assessment
SES Chief, Operating Reactors Branch 5
SES Chief, Systematic Evaluation Program Branch
SES Chief, Operating Reactors Assessment Branch
SES Director, Division of Engineering
SES Assistant Director for Components & Structures Engineering
SES Chief, Mechanical Engineering Branch
SES Chief, Geosciences Branch
SES Chief, Structural and Geotechnical Engineering Branch
SES Assistant Director for Materials, Chemical & Environmental Technology
SES Technical Advisor
SES Chief, Materials Engineering Branch
SES Chief, Chemical Engineering Branch
SES Chief, Equipment Qualification Branch
SES Chief, Environmental and Hydrologic Engineering Branch
SES Chief, Site Analysis Branch
SES Director, Division of Systems Integration
SES Special Assistant for Policy Development
SES Assistant Director for Core and Plant Systems
SES Chief, Instrumentation & Control Systems Branch
SES Chief, Power Systems Branch
SES Chief, Containment Systems Branch
SES Chief, Auxiliary Systems Branch
SES Assistant Director for Radiation Protection
SES Chief, Accident Evaluation Branch
SES Chief, Radiological Assessment Branch
SES Chief, Meteorology and Effluent Branch
SES Assistant Director for Reactor Safety
SES Chief, Reactor Systems Branch
SES Chief, Core Performance Branch
SES Director, Division of Human Factors Safety
SES Deputy Director, Division of Human Factors Safety
STS* Technical Advisor to the Director
SES Chief, Human Factors Engineering Branch

SES Chief, Operator Licensing Branch
SES Chief, Licensee Qualifications Branch
SES Chief, Procedures & Test Review Branch
SES Director, Division of Safety Technology
SES Assistant Director for Generic Projects
SES Chief, Generic Issues Branch
SES Chief, Research & Standards Coordination Branch
SES Assistant to the Director for Technology
SES Chief, Safety Program Evaluation Branch
SES Chief, Reliability and Risk Assessment Branch

OFFICE OF NUCLEAR REGULATORY RESEARCH

SES Director, Nuclear Regulatory Research
SES Deputy Director, Nuclear Regulatory Research

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS

SES Director, NMSS
SES Deputy Director, NMSS
SES Director, Division of Safeguards
SES Deputy Director, Division of Safeguards
SES Chief, Licensing Policy and Program Branch
SES Chief, Power Reactor Safeguards Licensing Branch
SES Chief, Fuel Facilities Safeguards Licensing Branch
SES Chief, Material Transfer Safeguards Licensing Branch
SES Deputy Director, Division of Fuel Cycle & Material Safety
SES Director, Division of Fuel Cycle & Material Safety
SES Chief, Adv & Spent Fuel Licensing Branch
SES Chief, Uranium Fuel Licensing Branch
SES Chief, Transportation and Certification Branch
SES Chief, Materials Certification and Procedures Branch
SES Chief, Licensing Proc and Integration Branch
SES Chief, Hi-Level Waste and Technical Development Branch
SES Deputy Director, Division Waste Management
SES Director, Division of Waste Management
SES* Chief, Engineering Branch
SES* Chief, Geotechnical Branch
SES* Chief, Low-Level and Uranium Recovery Projects Branch

OFFICE OF INSPECTION AND ENFORCEMENT

SES Director, Inspection and Enforcement
SES Deputy Director, Office Inspection and Enforcement
SES* Director, Program Support and Analysis Staff
SES Director, Enforcement Staff
SES Director, Division of Emergency Preparedness
SES Deputy Director, Division of Emergency Preparedness
SES Chief, Emergency Preparedness Licensing Branch
SES Chief, Operating Reactors Programs Branch
SES Chief, Reactor Construction Programs Branch
SES* Director, Division of Quality Assurance, Safeguards and Inspection Programs
SES* Deputy Director, Division of Quality Assurance, Safeguards and Inspection Programs
SES Chief, Engineering and Technical Support Branch
SES Chief, Quality Assurance Branch
SES Deputy Branch Chief, Quality Assurance Branch
SES Chief, Events Analysis Branch
SES Chief, Incident Response and Development Branch
SES* Chief, Safeguards and Materials Programs Branch

REGIONAL OFFICES

SES Regional Administrator, Region I
SES Deputy Regional Administrator, Region I
SES Director, Division of Project and Resident Programs, Region I
SES Director, Division of Engineering and Technical Programs, Region I
SES Regional Administrator, Region II
SES Deputy Regional Administrator, Region II
SES Director, Division of Engineering and Technical Programs, Region II
SES Director, Division of Project and Resident Programs, Region II
SES Regional Administrator, Region III
SES Deputy Regional Administrator, Region III
SES Director, Division of Project and Resident Programs, Region III
SES Director, Division of Engineering and Technical Programs, Region III
SES Regional Administrator, Region IV
SES Director, Uranium Recovery Field Office, Region IV
SES Deputy Regional Administrator, Region IV
SES* Director, Division of Resident, Reactor Project and Engineering Programs, Region IV
SES Director, Division of Vendor and Technical Programs, Region IV
SES Regional Administrator, Region V
SES Deputy Regional Administrator, Region V

SES Director, Division of Resident, Reactor Project and Engineering Programs Region V
SES Director, Division of Radiological and Safeguards Programs, Safety Region V

OFFICE FOR ANALYSIS AND EVALUATION OF OPERATIONAL DATA

SES Director, Office for Analysis and Evaluation of Operational Data
SES Deputy Director, Office for Analysis and Evaluation of Operational Data
SES Chief, Reactor Operations Branch
SES* Chief, Program Technology Branch

OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION AND CIVIL RIGHTS

SES Director, Office of Small and Disadvantaged Business Utilization and Civil Rights

AGENCY: OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Positions:

SES Executive Director
SES General Counsel

AGENCY: OFFICE OF PERSONNEL MANAGEMENT

Positions:

SES General Counsel, Office of the General Counsel
SES Associate Director, Administration Group
SES Associate Director, Compensation Group
SES Associate Director, Compliance and Investigations Group
SES Associate Director, Staffing Group
SES Associate Director, Work Force Effectiveness and Development Group
SES Executive Assistant Director, Office of Policy and Communications
SES* Assistant Director, Office of Congressional Relations
SES Assistant Director, Office of Executive Administration
SES* Assistant Director, Office of Public Affairs
SES* Inspector General, Office of the Inspector General
SES Chairman, Federal Prevailing Rate Advisory Committee
SES Deputy Director and Chief Counsel, Office of Government Ethics
SES Deputy General Counsel, Office of the General Counsel
SES Deputy Associate Director, Administration Group
SES Deputy Associate Director, Compensation Group
SES* Deputy Associate Director, Compliance and Investigations Group
SES Deputy Associate Director, Staffing Group
SES Deputy Associate Director, Workforce Effectiveness and Development Group
SES Associate General Counsel, Office of the General Counsel
SES* Assistant Director for Finance and Administrative Services, Administration Group
SES Assistant Director for Information Management, Administration Group
SES Assistant Director for Management, Administration Group
SES* Assistant Director for Personnel and EEO, Administration Group
SES* Assistant Director for Compensation Programs Development, Compensation Group
SES* Assistant Director for Financial Control and Management, Compensation Group
SES Assistant Director for Insurance Programs, Compensation Group
SES* Assistant Director for Pay and Benefits Policy, Compensation Group
SES* Assistant Director of Pay Programs, Compensation Group
SES Assistant Director for Retirement Programs, Compensation Group
SES Assistant Director for Agency Compliance and Evaluation, Compliance and Investigations Group
SES Assistant Director for Personnel Investigations, Compliance and Investigations Group
SES* Assistant Director for Work Force Information, Compliance and Investigations Group
SES Assistant Director for Administrative Law Judges, Staffing Group
SES Assistant Director for Staffing Operations, Staffing Group
SES Assistant Director for Staffing Policy, Staffing Group
SES Assistant Director for Standards Development, Staffing Group
SES* Assistant Director for Affirmative Employment Programs, Workforce Effectiveness and Development Group
SES* Assistant Director for Performance, Workforce Effectiveness and Development Group
SES* Assistant Director for Training and Development, Workforce Effectiveness and Development Group
SES Assistant Director for Employee, Labor, and Agency Relations, Office of Policy and Communications
SES Assistant Director for Regional Operations, Office of the Director
SES Regional Director, Atlanta Region
SES Regional Director, Boston Region
SES Regional Director, Chicago Region
SES Regional Director, Dallas Region
SES Regional Director, Denver Region
SES Regional Director, New York Region

SES Regional Director, Philadelphia Region
SES Regional Director, St. Louis Region
SES Regional Director, San Francisco Region
SES Regional Director, Seattle Region
SES* Chief Actuary, Compensation Group
SES Chief, Medical Policy and Programs Division, Staffing Group
SES Dean, Federal Executive Institute, Workforce Effectiveness and Development Group
SES Deputy Regional Director, Atlanta Region
SES Deputy Regional Director, Chicago Region
SES Deputy Regional Director, Dallas Region
SES Deputy Regional Director, Philadelphia Region
SES Deputy Regional Director, San Francisco Region

AGENCY: OFFICE OF SPECIAL COUNSEL (MSPB)

Positions:

SES Deputy Special Counsel
SES Associate Special Counsel for Investigation
SES Associate Special Counsel for Prosecution
SES Deputy Associate Special Counsel for Investigation
SES* Deputy Associate Special Counsel for Prosecution

AGENCY: OVERSEAS PRIVATE INVESTMENT CORPORATION

Positions: No section 207(d)(1)(C) designations.

AGENCY: PANAMA CANAL COMMISSION

Positions:

AD Administrator (18 U.S.C. 207(d)(1)(A) comparable)
CX Deputy Administrator

AGENCY: PEACE CORPS

Positions:

FE-2 General Counsel, Peace Corps
FE-2 Associate Director, International Operations, Peace Corps
FE-2* Executive Assistant to the Director, Peace Corps
FE-2* Associate Director, Marketing, Recruitment, Placement and Staging, Peace Corps
FE-2* Associate Director, Management, Peace Corps

AGENCY: PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Positions:

AD Executive Director of the Corporation
AD Assistant Director-Legal
AD Assistant Director-Development
AD All members of the Board of Directors (23)

AGENCY: PENSION BENEFIT GUARANTY CORPORATION

Positions:

GS-17 Deputy Executive Director for Insurance Programs
GS-17 General Counsel
GS-17* Director, Insurance Operations Department
GS-17* Director, Financial Operations Department

AGENCY: POSTAL RATE COMMISSION

Positions:

AD-18 General Counsel of the Commission
AD-18 Director of the Office of Technical Analysis and Planning
AD-18 Director of Office of Consumer Advocate

AGENCY: RAILROAD RETIREMENT BOARD

Positions:

SES Executive Director
SES* Associate Executive Director for Legal and Administrative Services/General Counsel
SES* Associate Executive Director for Financial, Data and Planning Operations
SES* Associate Executive Director for Field Service
SES Associate Executive Director for Retirement Claims
SES Associate Executive Director for Unemployment and Sickness Insurance
SES Chief Actuary and Director of Research
SES Director of Data Processing
SES Director of Fiscal and Planning Operations

AGENCY: SECURITIES AND EXCHANGE COMMISSION

Positions:

SES General Counsel
SES Director, Division of Corporation Finance
SES Director, Division of Corporate Regulation
SES Director, Division of Enforcement

SES Director, Division of Investment Management
SES Director, Division of Market Regulation
SES Chief Accountant of the Commission
SES Deputy Chief Accountant
SES Executive Director
SES Regional Administrator, New York
SES Regional Administrator, Chicago
SES Regional Administrator, Los Angeles
SES Deputy Regional Administrator, New York

AGENCY: SELECTIVE SERVICE SYSTEM

Positions:

SES Deputy Director of the Agency
SES Associate Director, Administration
SES Associate Director, Planning and Operations
SES Associate Director, Management Information Systems
SES Associate Director, Policy Development and Administrative Legal Systems

AGENCY: SMALL BUSINESS ADMINISTRATION

Positions:

SES Deputy Administrator
SES Regional Administrator, Region I
SES Regional Administrator, Region II
SES Regional Administrator, Region III
SES Regional Administrator, Region IV
SES Regional Administrator, Region V
SES Regional Administrator, Region VI
SES Regional Administrator, Region VII
SES Regional Administrator, Region VIII
SES Regional Administrator, Region IX
SES Regional Administrator, Region X
SES Director, Equal Employment Opportunity and Compliance
SES General Counsel
SES Deputy General Counsel
SES Associate Administrator for Procurement and Technology Assistance
SES Associate Administrator for Management Assistance
SES Associate Administrator for Minority Small Business & Capital Ownership Development
SES Associate Administrator of Finance and Investment
SES Assistant Administrator for Administration
SES Director of Personnel
SES Associate Deputy Administrator for Management and Administration
SES Associate Deputy Administrator for Special Programs
SES Assistant Administrator for Hearings and Appeals
SES Comptroller
SES* Director of Program Analysis and Review

AGENCY: TENNESSEE VALLEY AUTHORITY

Positions: No section 207(d)(1)(C) designations.

AGENCY: UNITED STATES ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Positions: No section 207(d)(1)(C) designations.

AGENCY: UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

Positions:

SES* Counselor
0-7/0-8 Senior Military Adviser, D
SES Special Representative for INF
SFS U.S. Representative to CD
SES Administrative Director
SES General Counsel
SES* Director, Office of Public Affairs
SES Deputy Assistant Director, SP
SFS Deputy Assistant Director, NWC
IPA Deputy Assistant Director, VI
SES Deputy Assistant Director, MA

AGENCY: UNITED STATES INFORMATION AGENCY

Positions:

SES Director, Office of Public Liaison
SES General Counsel
SES Deputy General Counsel

OFFICE OF INSPECTOR GENERAL

SES Inspector General

OFFICE OF INSPECTIONS

SFS Chief of Inspections

THE BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS

SFS Director of Cultural Centers and Resources
SES Director, Office of Academic Programs
SES Director, Office of International Visitors
SES Director, Office of Private Sector Programs

THE VOICE OF AMERICA

SFS Deputy Director (Modernization)
SES Deputy Director (Programs)
SES Director, Office of Administration
SES Director for News and English Broadcasts
SFS Director for Regional Language Broadcasts

SES Director of Engineering and Technical Operations
SES Director, Office of Personnel
SES Director, Radio Marti
SES Director of Broadcast Operations

THE BUREAU OF MANAGEMENT

SFS Deputy Associate Director
SES Director, Office of Administration and Technology
SES Director, Office of Comptroller
SES Director, Office of Personnel
SFS Director, Office of Equal Employment Opportunity and Civil Rights
SES Director, Office of Contracts
SES Director, Office of Security

THE BUREAU OF PROGRAMS

SES Director of Exhibits Service
SFS Director of Press and Publication Services
SES Deputy Associate Director
SES Executive Officer
SES Director, Office of Program Coordination and Development
SFS Director, Foreign Press Centers
SES Director, Office of Research

TELEVISION AND FILM SERVICE

SES Director of Television and Film Service
SES Deputy Director
SES International Marketing Manager
SES Facilities Manager
SES News and Current Events Manager

AREA OFFICES

SFS Director of African Affairs
SFS Deputy Director, African Affairs
SFS Director of European Affairs
SFS Deputy Directors of European Affairs (2)
SFS Director of East Asian and Pacific Affairs
SFS Deputy Director of East Asian and Pacific Affairs
SFS Director of American Republics Affairs
SFS Deputy Director of American Republics Affairs
SFS Director of North African, Near Eastern and South Asian Affairs
SFS Deputy Director of North African and Near Eastern and South Asian Affairs
SFS Public Affairs Officers of Class 1 Posts (22)

AGENCY: U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Positions:

AGENCY FOR INTERNATIONAL DEVELOPMENT

OFFICE OF THE ADMINISTRATOR

SFS-M Counselor to the Agency

OFFICE OF THE GENERAL COUNSEL

SES General Counsel
SES Senior Deputy General Counsel

OFFICE OF THE INSPECTOR GENERAL

SES Inspector General
SES Assistant Inspector General for Investigations and Inspection
SES Assistant Inspector General for Security
SES* Assistant Inspector General for Audit

OFFICE OF THE LEGISLATIVE AFFAIRS (LEG)

SES Director

BUREAU FOR EXTERNAL AFFAIRS (XA)

SES Assistant to the Administrator for External Affairs

BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT SUPPORT STAFF (BIFAD/S)

OFFICE OF THE EXECUTIVE DIRECTOR

SES Executive Director
SFS-MD Deputy Director

OFFICE OF THE U.S. FOREIGN DISASTER ASSISTANCE (OFDA)

SES Coordinator, Foreign Disaster Relief

BUREAU FOR MANAGEMENT

OFFICE OF THE ASSISTANT TO THE ADMINISTRATION FOR MANAGEMENT (AA/M)

SES Assistant to the Administrator for Management
SES Deputy Assistant to the Administrator for Management

OFFICE OF FINANCIAL MANAGEMENT (M/FM)

SES Controller
SES Deputy Controller

OFFICE OF PERSONNEL MANAGEMENT (M/PM)

SFS-MC Director
SES Deputy Director

DIRECTORATE FOR PROGRAM AND MANAGEMENT SERVICES (M/SER)

OFFICE OF THE ASSOCIATE ASSISTANT TO THE ADMINISTRATOR

SES Associate Assistant to the Administrator for Management (M/AAA/SER)

Office of Information Resources Management (M/SER/IRM)

SES Director
SES Deputy Director

Office of Management Operations (M/SER/MO)

SES Director
SES Deputy Director

Office of Contract Management (M/SER/CM)

SES Director
SES Deputy Director

Office of Commodity Management (M/SER/COM)

SES Director
SFS-C Deputy Director

Executive and Overseas Management Service

Office of the Director

SFS-C Director

Office of Equal Opportunity Programs (EOP)

SES Director

Bureau of Food for Peace and Voluntary Assistance (FVA)

Office of the Assistant Administrator (AA/FVA)

SFS-MC Deputy Assistant Administrator

Office of Program, Policy and Evaluation (PPE)

SFS-C Director, Program Policy and Evaluation

Office of Private and Voluntary Cooperation (PVC)

SES Director, Private and Voluntary Cooperation

Office of Food for Peace (FFP)

SES Coordinator, Food for Peace

Bureau for Private Enterprise (PRE)

Office of the Assistant Administrator (AA/PRE)

SFS-MC Deputy Assistant Administrator for Policy and Investment
SES Deputy Assistant Administrator for Housing & Urban Programs

Office of Policy and Program Review (PPR)

SES Director

Office of Housing & Urban Programs (H)

SES Director
SFS-MC Deputy Director
SFS-C Assistant Director for Urban Programs

President's Task Force for International Private Enterprise (TF/PRE)

SFS-C Executive Director
SFS-C Deputy Executive Director

Bureau for Program and Policy Coordination

Office of the Assistant Administrator (AA/PPC)

SFS-CM Deputy Assistant Administrator

Office of Policy Development and Program Review (PPC/PDPR)

SES Associate Assistant Administrator

Office of Planning and Budgeting (PPC/PB)

SFS-MC Associate Assistant Administrator

Office of Economic Affairs

SES Associate Assistant Administrator

Office of Evaluation

SFS-C Associate Assistant Administrator

Bureau for Science and Technology (S & T)

Office of the Senior Assistant Administrator

SFS-MC Deputy Assistant Administrator for Research
SFS-MC Deputy Assistant Administrator for Technical Cooperation

Office of Technical Review and Information

AD-18 Director

University Relations and Research Coordination

AD-18 Coordinator for University Relations and Research Support

Office of Program

SFS-MC Director

Agency Directorate for Food and Agriculture

SES Agency Director for Food and Agriculture

Office of Agriculture

SES Director

OFFICE OF NUTRITION

SES Director

AGENCY DIRECTORATE FOR ENERGY AND NATURAL RESOURCES

SES Agency Director for Energy and Natural Resources

OFFICE OF FORESTRY, ENVIRONMENT AND NATURAL RESOURCES

SES Director

OFFICE OF ENERGY

SES Director

AGENCY DIRECTORATE FOR HUMAN RESOURCES

SES Agency Director for Human Resources

OFFICE OF MULTISECTORAL DEVELOPMENT

SFS-C Director

OFFICE OF EDUCATION

SFS-C Director

OFFICE OF INTERNATIONAL TRAINING

SES Director
SFS-C Deputy Director

AGENCY DIRECTORATE FOR HEALTH AND POPULATION

SES Agency Director for Health and Population
SFS-C Deputy Agency Director for Health and Population

OFFICE OF HEALTH

SES Director

OFFICE OF POPULATION

SES Director
SES Deputy Director

BUREAU OF AFRICA (AFR)

SFS—CM Deputy Assistant Administrator
SFS—CM Deputy Assistant Administrator
SFS—CM Deputy Assistant Administrator for East and Southern Africa
SFS—CM Deputy Assistant Administrator for West and Central Africa

OFFICE OF DEVELOPMENT PLANNING (AFR/DP)

SFS-MC Director

OFFICE OF PROGRAM MANAGEMENT RESOURCES (AFR/PMR)

SFS-MC Director

OFFICE OF TECHNICAL RESOURCES (AFR/TR)

SFS-MC Director

OFFICE OF PROJECT DEVELOPMENT (AFR/PD)

SFS-C Director

BUREAU OF ASIA (AA/ASIA)

OFFICE OF THE ASSISTANT ADMINISTRATOR (AA/ASIA)

SFS-MC Deputy Assistant Administrator

OFFICE OF DEVELOPMENT PLANNING (ASIA/DP)

SFS-MC Director

OFFICE OF TECHNICAL RESOURCES (ASIA/TR)

SFS-MC Director

BUREAU FOR LATIN AMERICAN AND CARIBBEAN (LAC)

OFFICE OF THE ASSISTANT ADMINISTRATOR (AA/LAC)

SES Deputy Assisant Administrator
AD-18 Special Assistant

OFFICE OF DEVELOPMENT PROGRAMS (LAC/DR)

SFS-MC Director

OFFICE OF DEVELOPMENT RESOURCES (LAC/DR)

SFS-MC Director

BUREAU FOR NEAR EAST (NE)

OFFICE OF THE ASSISTANT ADMINISTRATOR (AA/NE)

SES Deputy Assistant Administrator

OFFICE OF DEVELOPMENT PLANNING (NE/DP)

SFS-MC Director

OFFICE OF PROJECT DEVELOPMENT (NE/DP)

SFS-MC Director

OFFICE OF TECHNICAL SUPPORT (NE/TECH)

SFS-MC Director

MISSIONS

AFRICA

SFS-MC Director, Botswana
SFS-C* AID Representative, Burundi
SFS-MC Director, Cameroon
SFS-C AID Representative, Chad
SFS-C* AID Representative, Djibouti
SFS-MC AID Representative, Gambia
SFS-MC Director, Ghana
SFS-MC Director, Kenya
SFS-MC Director, Lesotho
SFS-MC AID Representative, Malawi
SFS-MC Director, Mali
SFS-MC Director, Mauritania
SFS-MC Director, Niger
SFS-C AID Representative, Rwanda

SFS-MC Director, Senegal
SFS-MC Director, Somolia
SFS-MC Director, Sudan
SFS-MC Director, Swaziland
SFS-MC Director, Tanzania
SFS-C AID Representative, Togo
SFS-MC Director, Uganda
SFS-MC Director, Upper Volta
SFS-MC AID Representative, Zambia
SFS-MC Director, Zimbabwe
SFS-C Controller, Regional Financial Management Center (Kenya)
SFS-MC Director, Regional Economic Development Services Office, West Africa
SFS-MC Director, Regional Economic Development Services Office, East Africa
SFS-C Regional Development Officer, Guinea-Bissau/Cape Verde
SFS-C Regional Housing Officer, West Africa
SFS-C Regional Housing Officer, East Africa

Asia

SFS-C AID Representative, Burma
SCS-C Regional Development Officer, Fiji
SFS-MC Director, Nepal
SFS-MC Director, Sri-Lanka
SFS-MC Director, Thailand

Europe

SFS-C AID Coordinator, Geneva
SFS-C Regional Food for Peace Officer, FAO Affairs, Rome

Latin America and the Caribbean

SFS-C AID Representative, Belize
SFS-MC Director, Bolivia
SFS-MC Director, Regional Development Office, Caribbean
SFS-MC Director, Costa Rica
SFS-MC Director, Equador
SFS-MC Director, El Salvador
SFS-MC Director, Guatemala
SFS-MC Director, Guyana
SFS-MC Director, Regional Office for Central American Programs, (ROCAP)
SFS-MC Director, Haiti
SFS-MC Director, Honduras
SFS-MC Director, Jamaica
SFS-MC Director, Nicaragua
SFS-MC Director, Panama
SFS-MC Director, Paraguay
SFS-C Regional Housing Officer, Latin America
SFS-C* AID Representative, Mexico

Near East

SFS-MC Director, Lebanon
SFS-MC Director, Morocco
SFS-C AID Representative, Oman
SFS-MC AID Representative, Portugal
SFS-MC Director, Tunisia
SFS-MC Director, Yemen
SFS-C Regional Housing Officer, Tunisia

TRADE AND DEVELOPMENT PROGRAM

SES Director

AGENCY: U.S. POSTAL SERVICE

Positions:

AD-17 Associate Judicial Officer

AGENCY: UNITED STATES RAILWAY ASSOCIATION

Positions:

AD President
AD Executive Vice President
AD Vice President—(1)

AGENCY: UNITED STATES SOLDIERS' & AIRMEN'S HOME

Positions: No section 207(d)(1)(C) designations.

AGENCY: VETERANS ADMINISTRATION

Positions:

Office of the Administrator

SES* Associate Deputy Administrator for Congressional and Intergovernmental Affairs
SES Associate Deputy Administrator for Logistics
SES Associate Deputy Administrator for Information Resources Management
SES* Associate Deputy Administrator for Public and Consumer Affairs

Office of Inspector General

SES Deputy Inspector General

Office of the General Counsel

SES General Counsel
SES Deputy General Counsel

Office of Program Planning and Evaluation

SES Director

Office of Budget & Finance

SES Director

Office of Construction

SES Director
SES Deputy Director

Department of Memorial Affairs

SES Chief Memorial Affairs Director
SES Deputy Chief Memorial Affairs Director

Department of Veterans' Benefits

SES Chief Benefits Director

SES Deputy Chief Benefits Director

DEPARTMENT OF MEDICINE AND SURGERY

AD Deputy Associate Deputy Chief Medical Director

OFFICE OF PERSONNEL & LABOR RELATIONS

SES Director
SES Deputy Director

OFFICE OF DATA MANAGEMENT AND TELECOMMUNICATIONS

SES Director

OFFICE OF PROCUREMENT & SUPPLY

SES Director
SES Deputy Director

OFFICE OF INFORMATION MANAGEMENT & STATISTICS

SES Director

[50 FR 31097, July 31, 1985]

PART 738—OFFICE OF GOVERNMENT ETHICS

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738.312 Referral of requests.
738.313 Agency Opinions.

AUTHORITY: Titles II and IV of Pub. L. 95-521 (October 26, 1978), as amended by Pub. L. 96-19 (June 13, 1979) and Pub. L. 96-28 (June 22, 1979); 5 U.S.C. Appendix 401.

SOURCE: 46 FR 2583, Jan. 9, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 738.101 Authority and purpose.

(a) *Authority.* The regulations of this part are issued pursuant to the authority of Titles II and IV of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) ("the Act").

(b) *Purpose.* These regulations supplement and implement Titles II, IV and V of the Act, set forth more specifically certain procedures provided in those titles, and furnish examples, where appropriate.

§ 738.102 General policies.

(a) The Office of Government Ethics ("the Office") provides overall direction and leadership concerning executive branch policies related to preventing conflicts of interest. The head of each agency has primary responsibility for the administration of the "ethics in government" program within his or her agency. The Office carries out its leadership role by:

(1) Providing information on and promoting ethical standards in executive agencies;

(2) Consulting with agencies regarding their agency ethics programs and assisting them in interpreting ethics rules and regulations;

(3) Developing rules and regulations pertaining to conflicts of interests and standards of conduct;

(4) Monitoring compliance with the public and confidential financial disclosure requirements;

(5) Establishing a formal advisory opinion service; and

(6) Evaluating the effectiveness of programs designed to prevent conflicts of interests.

§ 738.103 Agency regulations.

Each agency may, subject to the prior approval of the Office of Government Ethics, issue regulations not inconsistent with this part.

§ 738.104 Definitions.

For the purposes of this part:

"*Act*" means the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended).

"*Agency*" means any executive department, military department, Government corporation, independent establishment or agency, including the United States Postal Service and Postal Rate Commission.

"*Designated agency ethics official*" means an officer or employee who is designated by the head of the agency to coordinate and manage the agency's ethics program in accordance with the provisions of § 738.203 of this part.

"*Director*" means the Director of the Office of Government Ethics.

"*Executive branch*" includes each executive department, military department, Government corporation, independent establishment, and any other entity or administrative unit in the executive branch unless such agency, entity or unit is specifically included in the coverage of Title I (relating to the legislative branch) or Title III (relating to the judicial branch) of the Act.

"*Person*" includes an individual, partnership, corporation, association, government agency, or public or private organization.

Subpart B—Designated Agency Ethics Official

§ 738.201 In general.

Each agency shall have a designated agency ethics official who is the officer or employee designated by the head of the agency to administer the provisions of Title II of the Act within that agency, to coordinate and manage the agency's ethics program and to provide liaison to the Office of Government Ethics with regard to all aspects of such ethics program. The agency's ethics program shall be designed to implement Titles II, IV and V of the Act and regulations promulgated thereunder, Executive Order 11222 (relating to standards of conduct for officers and employees within the executive branch) and regulations promulgated thereunder, and other statutes and regulations applicable to agency ethics matters.

§ 738.202 Responsibilities of agency head.

(a) *In general.* The head of each agency is responsible for and shall exercise personal leadership in establishing, maintaining, and carrying out the agency's ethics program. He or she shall make available to the ethics program sufficient resources (including investigative, audit, legal, and administrative staff as necessary) to enable the agency to administer its program in a positive and effective manner.

(b) *Selection of a designated agency ethics official.* The head of each agency shall appoint an individual to serve as the designated agency ethics official and an individual to serve in an acting capacity in the absence of the primary designated agency ethics official (alternate agency ethics official). In selecting these two individuals the head of an agency should ensure that the experience of such appointees in administrative, legal, managerial, or analytical work demonstrates the ability to—

(1) Review the financial disclosure reports submitted by officers or employees within the agency, assessing the application of conflict of interest laws and regulations to the information reported and counseling those officers or employees with regard to resolving actual or potential conflicts of interests, or appearances thereof;

(2) Review the financial disclosure reports submitted by Presidential appointees for confirmation purposes and counsel those appointees with regard to resolving potential conflicts of interest, or appearances thereof, before the confirmation hearing;

(3) Counsel agency personnel concerning ethics standards and programs;

(4) Counsel departing and former agency officials on post-employment conflict of interest standards;

(5) Assist managers and supervisors in understanding and implementing agency ethics programs;

(6) Administer a system for periodic evaluation of the ethics program; and

(7) Select deputy ethics officials if necessary and manage the ethics program through them.

(c) *Designation.* The head of each agency shall formally delegate functional authority to coordinate and manage the ethics program as set forth in § 738.203 to the designated and alternate agency ethics officials. Within 30 days of any such delegation of authority the head of the agency shall submit to the Office of Government Ethics a formal written designation. The designation shall include:

(1) The names of the individuals so designated;

(2) The title of the position held by each designee; and

(3) A copy of the delegation of authority.

§ 738.203 Duties of the designated agency ethics official.

(a) *In general.* The designated agency ethics official shall coordinate and manage the agency's ethics program. The program consists generally of:

(1) Liaison with the Office of Government Ethics;

(2) Review of financial disclosure reports;

(3) Initiation and maintenance of ethics education and training programs; and

(4) Monitoring administrative actions and sanctions.

(b) *Program elements.* In carrying out this program on behalf of the head of the agency, the designated agency ethics official shall ensure that:

(1) Close liaison with the Office of Government Ethics concerning the agency's ethics program is developed and maintained;

(2) An effective system and procedure for the collection, filing, review, and, when applicable, public inspection of the financial disclosure reports as required by Title II of the Act, Executive Order 11222, and other applicable statutes and regulations is developed and properly administered;

(3) The financial disclosure reports of Presidential nominees to agency positions submitted prior to Senate confirmation hearings pursuant to § 734.604(c) of Part 734 are certified personally by him or herself or alternate designated agency ethics official in his or her absence;

(4) All financial disclosure reports submitted by employees and filed in bureaus and regional offices, as well as those submitted and filed at the agency's headquarters, are properly maintained and effectivelly and consistently reviewed for conformance with all applicable laws and statutes;

(5) A list of those circumstances or situations which have resulted or may result in noncompliance with ethics laws and regulations is developed, maintained and published within the agency as required by § 206(b)(7) of the Act and made available for public inspection;

(6) An education program for agency employees concerning all ethics and standards of conduct matters, including post employment matters, is developed and conducted in cooperation with the education program of the Office of Government Ethics;

(7) A counseling program for agency employees concerning all ethics and standards of conduct matters including post employment matters, is developed and conducted;

(8) Records are kept, when appropriate, on advice rendered;

(9) Prompt and effective action including administrative action is undertaken to remedy:

(i) Violations or potential violations, or appearances thereof, of the agency's standards of conduct including post employment regulations;

(ii) The failure to file a financial disclosure report or portions thereof;

(iii) Potential or actual conflicts of interests, or appearances thereof, which were disclosed on a financial disclosure report; and

(iv) Potential or actual violations of other laws governing the conduct or financial holdings of officers or employees of that agency, and

that a follow-up is made to ensure that actions ordered, including divestiture and disqualification, have been taken;

(10) The agency's standards of conduct regulations, financial disclosure systems, and post-employment enforcement systems are evaluated peri-

odically to determine their adequacy and effectiveness in relation to current agency responsibilities;

(11) Information developed by internal audit and review staff, the Office of the Inspector General, if any, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations;

(12) The services of the agency's Office of the Inspector General, if any, are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office;

(13) A list of those persons to whom delegations of authority are made pursuant to § 738.204(a) is maintained and made available to the Office of Government Ethics, upon request; and

(14) Information required by the Act or requested by the Office of Government Ethics in the performance of its responsibilities is provided in a complete and timely manner.

§ 738.204 Deputy ethics official.

(a) *Functions.* A designated agency ethics official may, if necessary, delegate to one or more deputy ethics officials any of the duties referred to in § 738.203, except for those functions set forth in § 734.604(c)(2) of Part 734 and referred to in § 738.203(b)(3) (certification of nominee statements). A deputy ethics official shall work under the supervision of the designated agency ethics official in carrying out such delegated functions.

(b) *Dual status.* A deputy ethics official may also be designated pursuant to § 738.202 to serve as the alternate agency ethics official. During the absence of the designated agency ethics official a deputy ethics official who has also been designated as the alternate ethics official shall perform the functions set forth in § 734.604(c)(2) of Part 734 and referred to in § 738.203(b)(3).

Subpart C—Formal Advisory Opinion Service

§ 738.301 In general.

(a) The Director of the Office of Government Ethics has the authority and responsibility to render formal advisory opinions pursuant to Section 402(b)(8) of the Act. This service is available to any person who has a question about a matter over which the Office of Government Ethics has jurisdiction. Formal advisory opinions will be issued when a two-pronged test is met. First, the person making the request must meet the requirements of § 738.302 and, second, the subject matter of the request must meet the criteria set forth in § 738.303.

(b) Normally, formal advisory opinions will not be issued to individuals who wish to obtain general advice concerning their own specific present or proposed activities or financial transactions. Such questions should be directed to the designated ethics official of the agency in which the individual will serve, serves or served. If a designated agency ethics official receives a request which he or she believes should be answered by the Office of Government Ethics, a referral procedure is available.

(c) The Office of Government Ethics will provide interested parties, to the extent practicable, with an opportunity to comment on any question which will be the subject of a formal advisory opinion issued by the Office. These opinions will be published in a form which will not identify specific individuals unless necessary to the understanding of the opinion. Copies will be sent to the designated ethics officials of each agency and be available at the Office of Government Ethics in that same form.

§ 738.302 Who may request a formal advisory opinion.

Any person (as defined in § 738.104) may request an opinion with respect to a situation in which that person is directly involved. A designated agency ethics official, representative, or attorney may request an opinion on behalf of the person. Notwithstanding this direct involvement requirement, a designated agency ethics official may always request an opinion concerning a situation about which he or she has knowledge.

§ 738.303 Subject matter of formal advisory opinions.

Formal advisory opinions will be rendered on matters of general applicability or on important matters of first impression concerning the application of the Act, Executive Order 11222 and regulations promulgated pursuant to such Act and Executive Order, and the laws embodied in 18 U.S.C. 202-209. The Director will respond to those requests which in his or her discretion fall within this category taking into consideration:

(a) The unique nature of the question and its precedential value,

(b) The potential number of officers or employees throughout the Government affected by the question,

(c) The frequency with which the question arises, and

(d) The likelihood or presence of inconsistent interpretations on the same question by different agencies.

Except in unusual circumstances, opinions will not be rendered with respect to hypothetical situations posed in requests. Opinions may be rendered, however, on proposed activities or transactions.

§ 738.304 Form of requests for formal advisory opinions.

(a) A request for a formal advisory opinion should be directed to the Director, Office of Government Ethics, 1900 E Street, NW, Room 436H, Washington, D.C. 20415.

(b)(1) A request should be in writing and signed by the individual making the request or by a representative of that person. A request shall state all material facts necessary for the Director to render a complete and correct opinion.

(2) In addition, it should also include the following information:

(i) the name, mailing address, and daytime telephone contact of the individual making the request, and

(ii) a copy of the position, description of the position involved, if available.

(c) If the request is submitted by a representative, he or she must show his or her representative status, list a mailing address and daytime telephone contact.

§ 738.305 Acceptance of requests for formal advisory opinions.

(a) Subject to the provisions of paragraph (d) of this section, the Director shall review each request for a formal advisory opinion and take one of the following actions:

(1) If the Director determines that the person making the request meets the requirements of § 738.302 and that the subject matter of the request qualifies under the criteria established in § 738.303, he or she shall assign an identifying number to the request and notify the person that a formal advisory opinion will be rendered; or

(2) If the Director determines that the person making the request is not a person who is eligible to receive a formal advisory opinion as provided in § 738.302, or that the subject of the request is not a matter upon which the Office issues formal advisory opinions as outlined by § 738.303, he or she shall so notify the person making the request.

When a formal advisory opinion will not be rendered, the Office of Government Ethics may provide other informational assistance to the person as appropriate. (See also § 738.312.)

(b) If at any time after receipt of a request for a formal advisory opinion, the Director believes that additional relevant information is needed, he or she may seek such information directly from the person requesting the opinion or from other sources which may include the agency involved.

(c) The person requesting the opinion may furnish the Office of Government Ethics with legal memoranda or other material relevant to the opinion requested.

(d)(1) In the case of a request which involves an actual or apparent violation of any conflict of interest law embodied in 18 U.S.C. 202-209, the Director shall consult with the Criminal Division of the Department of Justice.

(2) If after such consultation the Criminal Division determines that a

criminal investigation will be undertaken, the Director shall take no further action with regard to that request pending a determination by the Criminal Division not to prosecute.

(3) Upon receipt of a determination by the Criminal Division not to prosecute, the Director shall then follow the procedures for all other requests for formal advisory opinions set forth in this part.

§ 738.306 Notice of requests.

The Director shall provide notice to interested parties identified in a request which will be the subject of a formal advisory opinion that such an opinion will be rendered. Generally, the designated agency ethics official of the agency involved shall be notified of the request.

§ 738.307 Written comment on requests.

(a) To the extent practicable, the Director shall provide interested parties with an opportunity to submit written comment on a request for a formal advisory opinion. A time by which the comment should be received to be considered will be indicated with the notice that the request has been made.

(b) Additional time in which to comment may be granted upon written request or at the discretion of the Director. Such requests and all written comments shall be sent to the Office of Government Ethics, 1900 E Street, NW, Room 436H, Washington, D.C. 20415.

§ 738.308 Issuance.

(a) A formal advisory opinion,

(1) Which involves the application of any conflict of interest law embodied in 18 U.S.C. 202-209 to a transaction or activity which does not raise a question of an actual or apparent violation of this law but which raises an important matter of first impression, or

(2) Which is issued following the procedure set forth in § 738.305(d), requires consultation by the Office of Government Ethics with the Office of Legal Counsel of the Department of Justice before it is issued.

(b) An advisory opinion shall be considered issued when it is dated, numbered, and signed by the Director. Unless released by the person who made the request, the opinion will not become publicly available until information which identifies individuals involved and which is unnecessary to the complete understanding of the opinion has been deleted from the opinion and this version of the opinion is placed in a public reading file at the Office of Government Ethics. (See § 738.310)

§ 738.309 Reliance on formal advisory opinions.

(a) Any formal advisory opinion referred to in § 738.308(a) or any provisions or finding of a formal advisory opinion involving the application of the Act, Executive Order 11222 and the regulations promulgated pursuant to the Act or Executive Order, may be relied upon by:

(1) Any person directly involved in the specific transaction or activity with respect to which such advisory opinion has been rendered, and

(2) Any person directly involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion was rendered.

(b) Any person who relies upon any provision or finding of any formal advisory opinion in accordance with paragraph (a) of this section and who acts in good faith in accordance with the provisions and findings of such opinion, shall not, as a result of such act, be subject to prosecution under 18 U.S.C. 202-209 or, in the case where the opinion is exculpatory, be subject to any administrative adverse action or civil action based upon legal authority cited in that opinion.

§ 738.310 Public availability and publication of formal advisory opinions.

(a) The Director shall make sufficient deletions in any formal advisory opinion so that unless necessary to the complete understanding of the opinion, the identity of any person involved is not disclosed. No deletion shall in any way affect the substance of the opinion.

(b) A copy of this version of the opinion shall then be make available for public inspection within 10 working days after the issuance of the opinion at the Office of Government Ethics, 1717 H Street, NW, Room 436, Washington, D.C.

(c) The Director shall thereafter publish this version of the opinion.

§ 738.311 Copies of published formal advisory opinions.

Each designated agency ethics official shall receive a copy of each published opinion. Copies will also be available to the public from the Office of Government Ethics upon request at no more than cost.

§ 738.312 Referral of requests.

(a) If a designated agency ethics official receives a request for advice from a person and determines that the request may come within the criteria set forth in § 738.303, he or she shall contact the Office of Government Ethics concerning the request before referring the request to the Office. If after such consultation the Office of Government Ethics determines that the request should be the subject of a formal advisory opinion, the designated agency ethics official shall notify the person making the request of that determination and request the person's permission to refer the request to the Office of Government Ethics.

(b) If the Director receives a request for an opinion which does not fulfill the criteria set forth in § 738.303, he or she may:

(1) Furnish informational assistance to the person as provided in § 738.305(a), or

(2) Refer the request to the appropriate designated agency ethics official.

(c) In all instances covered by paragraphs (a) and (b) of this section, a referral will not be made in the case of questions regarding possible future employment plans of an individual making the request unless he or she is first notified and gives his or her consent or the request itself indicates that such a referral may be made.

§ 738.313 Agency opinions.

If the designated agency ethics official issues a written opinion concerning the application of 18 U.S.C. 202-209, he or she shall transmit a copy of that opinion to the Office of Government Ethics.

PART 752—ADVERSE ACTIONS

Subpart A—Principal Statutory Requirements for Suspension for 14 Days or Less

Sec.
752.101 Principal statutory requirements.

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

752.201 Coverage.
752.202 Standard for action.
752.203 Procedures.

Subpart C—Principal Statutory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

752.301 Principal statutory requirements.

Subpart D—Regulatory Requirements Implementing Subpart C

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752.402 Definitions.
752.403 Standard for action.
752.404 Procedures.
752.405 Appeal and grievance rights.
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Subpart E—Principal Statutory Requirements for Taking Adverse Actions Under the Senior Executive Service

752.501 Principal statutory requirements.

Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

752.601 Coverage.
752.602 Definitions.
752.603 Standard for action.
752.604 Procedures: Adverse actions.
752.605 Appeal rights: Adverse actions.
752.606 Agency records.

AUTHORITY: 5 U.S.C. 7504, 7514; 5 U.S.C. 1302, Pub. L. 95-494, unless otherwise noted.

SOURCE: 45 FR 46778, July 11, 1980, unless otherwise noted.

Subpart A—Principal Statutory Requirements for Suspension for 14 Days or Less

§ 752.101 Principal statutory requirements.

This subpart incorporates the principal statutory requirements for suspensions for 14 days or less, found in subchapter II of chapter 75 of title 5, United States Code.

CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

§ 7501. Definitions

For the purpose of this subchapter—

(1) "employee" means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) "suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

§ 7502. Actions covered

This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

§ 7503. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

(1) an advance written notice stating the specific reasons for the proposed action;

(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

§ 7504. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

§ 752.201 Coverage.

(a) *Actions covered.* This subpart covers suspension for 14 days or less.

(b) *Employees covered.* The following employees are covered by this subpart:

(1) An employee covered by the definition in 5 U.S.C. 7501(1), including an employee of the Government Printing Office; and

(2) An employee with competitive status who occupies a position under Schedule B of Part 213 of this chapter.

(c) *Definitions.* In this subpart, *Day* means calendar day. *Suspension* has the meaning given in 5 U.S.C. 7501(2).

(d) *Exclusions.* This subpart does not apply to actions excluded by 5 U.S.C. 7502, or to a suspension for 14 days or less:

(1) Taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter I, chapter 75 of title 5, United States Code; or

(2) Of a reemployed annuitant.

(3) Of a National Guard Technician.

[45 FR 46778, July 11, 1980, as amended at 46 FR 12191, Feb. 13, 1981]

§ 752.202 Standard for action.

(a) An agency may take action under this subpart only as set forth in 5 U.S.C. 7503(a).

(b) An agency may not take a suspension against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.203 Procedures.

(a) *Employee entitlements.* An employee under this subpart whose suspension is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7503(b).

(b) *Notice of proposed action.* The notice of proposal shall inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice.

(c) *Time to answer.* The employee shall be given a reasonable time to answer but not less than 24 hours.

(d) *Representation.* 5 U.S.C. 7503(b)(3) provides that an employee covered by this part is entitled to be represented in a suspension action by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position; or an employee of the agency whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignments preclude his or her release. 5 U.S.C. 7114(a)(5) and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(e) *Agency decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any answer of the empoloyee and/or his or her representative made to a designated official. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective.

(f) *Agency records.* The agency shall maintain copies of the items specified in 5 U.S.C. 7503(c) and shall furnish them upon request as required by that subsection.

Subpart C—Principal Statutory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 752.301 Principal statutory requirements.

This subpart incorporates the principal statutory requirements in subchapter II of chapter 75 of title 5, United States Code, for removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

CHAPTER 75—ADVERSE ACTIONS

Subchapter II—Removal Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 7511. Definitions; application

(a) For the purpose of this subchapter—

(1) "employee" means—

(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

(2) "suspension" has the meaning as set forth in section 7501(2) of this title;

(3) "grade" means a level of classification under a position classification system;

(4) "pay" means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

(5) "furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advise and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office.

§ 7512. Actions covered

This Subchapter applies to—

(1) a removal;

(2) a suspension for more than 14 days;

(3) a reduction in grade;

(4) a reduction in pay; and

(5) a furlough of 30 days or less;

but does not apply to—

(A) a suspension or removal under section 7532 of this title,

(B) a reduction-in-force action under section 3502 of this title,

(C) the reducation in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

(D) a reduction in grade or removal under section 4303 of this title, or

(E) an action initiated under section 1206 or 7521 of this title.

§ 7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative, and

(4) a written decision and the specific reasons therefore at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and an order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

§ 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

Subpart D—Regulatory Requirements Implementing Subpart C

§ 752.401 Coverage.

(a) *Adverse actions covered.* This subpart applies to an action set forth in subchapter II of chapter 75 of title 5, United States Code, including but not limited to:

(1) An action based solely on nonperformance related factors;

(2) An action that involves both performance and nonperformance related factors; and

(3) A solely performance-based action which is taken by an agency that is not included within the definition of agency under subchapter I of chapter 43 of title 5, United States Code.

(b) *Employees covered.* The following employees are covered by this subpart:

(1) An employee covered by the definition in 5 U.S.C. 7511(a)(1)(A), including an employee of the Government Printing Office and an employee of the Administrative Office of the United States Courts;

(2) An employee covered by the definition in 5 U.S.C. 7511(a)(1)(B), and

(3) an employee with competitive status who occupies a position in Schedule B of Part 213 of this title,

(4) An employee who occupies a professional and administrative career (PAC) position in Schedule B of Part 213 of this title, provided that the employee has completed a trial period of one year after initial appointment in such a position.

(c) *Exclusions.* The subpart does not apply to actions and employees excluded by 5 U.S.C. 7511(b) and 7512, or the following:

(1) Action taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter II of chapter 75 of title 5, United States Code;

(2) Action which entitles an employee to grade retention under Part 536 of this title, and an action to terminate this entitlement;

(3) Voluntary action initiated by the employee;

(4) Action taken or directed by the Office of Personnel Management under Part 731 or Part 754 of this title;

(5) Involuntary retirment because of disability under Part 831 of this title;

(6) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(7) Action which terminates a temporary promotion within a maximum period of two years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted.

(8) An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with § 335.102(g).

(9) Cancellation of a promotion to a position not classified prior to the promotion;

(10) Placement of an employee serving on an intermittent, part-time, or seasonal basis in a nonduty, nonpay status in accordance with conditions established at the time of appointment;

(11) Reduction of an employee's rate of pay from a rate which is contrary to law or regulation to a rate which is required or permitted by law or regulation;

(12) A reemployed annuitant;

(13) A Presidential appointee;

(14) A National Guard Technician; or

(15) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, who is appointed under chapter 73 of title 38, United States Code.

(5 U.S.C. 3301, 3302; E.O. 10577)

[45 FR 46778, July 11, 1980, as amended at 46 FR 42437, Aug. 21, 1981; 47 FR 38259, Aug. 31, 1982; 47 FR 57656, Dec. 28, 1982]

§ 752.402 Definitions.

In this subpart, *Day* means calendar day. *Furlough* has the meaning given in 5 U.S.C. 7511(5). *Grade* has the meaning given in 5 U.S.C. 7511(3). *Pay* has the meaning given in 5 U.S.C. 7511(4). *Suspension* has the meaning given in 5 U.S.C. 7501(2).

§ 752.403 Standard for action.

(a) An agency may take adverse action under this subpart only as set forth in 5 U.S.C. 7513(a).

(b) An agency may not take an adverse action against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.404 Procedures.

(a) *Statutory entitlements.* An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7513(b).

(b) *Notice of proposed action.* (1) The notice of proposal shall inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice. The agency may not use material which cannot be disclosed to the employee or his or her representative or designated physician under § 297.108(c)(1) of Part 297 of this title to support the reasons in the notice.

(2) When some but not all employees in a given competitive level are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(3) Under ordinary circumstances, an employee whose removal has been proposed shall remain in a duty status in his regular position during the advance notice period. In those rare circumstances where the agency deter-

mines that the employee's continued presence in the work place during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency shall consider whether any of the following alternatives is feasible:

(i) Assigning the employee to duties where he or she is no longer a threat to safety, the agency mission, or to Government property;

(ii) Placing the employee on leave with his or her consent;

(iii) Placing the employee on involuntary sick or other leave when the agency has medical documentation demonstrating physical or mental incapacitation;

(iv) Carrying the employee on appropriate leave (annual, sick, leave without pay, or absence without leave) if he or she is absent for reasons not originating with the agency; or

(v) Curtailing the notice period when the agency can invoke the provisions of § 752.404(d)(1) (the "crime provision"). This provision may be invoked even in the absence of judicial action if the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed. If none of these alternatives is available, the agency may place the employee in a paid, nonduty status during all or part of the advance notice period.

(c) *Employee's answer.* (1) The agency shall give the employee a reasonable amount of official time to review the material relied on to support its proposal and to prepare an answer and to secure affidavits, if he or she is otherwise in an active duty status.

(2) The agency shall designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides one in its regulations in accordance with paragraph (g) of this section.

(3) If the employee wishes the agency to consider any medical condition which may contribute to a conduct, performance, or leave problem, the employee shall be given a reasonable time to furnish medical documentation (as defined in § 339.102 of this chapter) of the condition. Whenever possible, the employee shall supply such documentation within the time limits allowed for an answer. After its review of the medical documentation supplied by the employee, the agency may, if authorized, require a medical examination under the criteria of § 339.301(a)(3) and the procedures of § 339.302 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.301(d) and procedures of § 339.302 of this chapter. If the employee has five years of service, the agency shall provide information concerning disability retirement. The agency shall be aware of the affirmative obligations of the provisions of 29 CFR 1613.704, which require reasonable accommodation of a qualified employee who is handicapped.

(d) *Exceptions.* (1) 5 U.S.C. 7513(b) authorizes an exception to the 30 days' advance written notice when the crime provision is invoked. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the employee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the action.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(e) *Representation.* 5 U.S.C. 7513(b)(3) provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position; or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release. 5 U.S.C. 7114(a)(5) and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(f) *Agency decision.* In arriving at its decision, the agency shall not consider any reasons for action other than those specified in the notice of proposed action. It shall consider any answer of the employee and/or his or her representative made to a designated official and any medical documentation furnished under paragraph (c) of this section. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective, and advise the employee of appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7513(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral answer.

(h) *Applications for disability retirement.* Section 831.501(d) of this chapter provides that an employee's application for disability retirement shall not preclude or delay any other appropriate personnel action. Section 831.1203 of this chapter sets forth the basis under which an agency shall file an application for disability retirement on behalf of an employee.

(5 U.S.C. 7513, 7514, 1302)

[45 FR 46778, July 11, 1980, as amended at 48 FR 19349, Apr. 29, 1983; 48 FR 45526, Oct. 6, 1983; 49 FR 1330, Jan. 11, 1984]

§ 752.405 Appeal and grievance rights.

(a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) *Grievance rights.* 5 U.S.C. 7121(e)(1) requires an aggrieved employee to elect to appeal under this subpart or, where applicable, to file a grievance under the negotiated grievance procedure, but not both.

§ 752.406 Agency records.

The agency shall maintain copies of the items specified in 5 U.S.C. 7513(e) and shall furnish them upon request as required by that subsection.

Subpart E—Principal Statutory Requirements for Taking Adverse Actions Under the Senior Executive Service

§ 752.501 Principal statutory requirements.

This subpart sets forth for the benefit of the user the statutory requirements of subchapter V of Chapter 75 for suspension for more than 14 days and removal from the civil service. (5 U.S.C. 7541-7543)

"§ 7541. DEFINITIONS

"For the purpose of this subchapter—

"(1) 'employee' means a career appointee in the Senior Executive Service who—

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

"(2) 'suspension' as the meaning set forth in section 7501(2) of this title.

"§ 7542. Actions covered

"This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 of this title.

"§ 7543. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.".

Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

AUTHORITY: 5 U.S.C. 7543.

§ 752.601 Coverage.

(a) *Adverse actions covered.* This subpart applies to suspensions for more than 14 days and removals from the civil service as set forth in 5 U.S.C. 7542.

(b) *Exclusions.* This subpart does not apply to actions under 5 U.S.C. 1206, 3592, and 7532.

(c) *Employees covered.* This section covers a career appointee—

(1) Who has completed the probationary period in the Senior Executive Service;

(2) Who is not requried to serve a probationary period in the Senior Executive Service; or

(3) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

§ 752.602 Definitions.

In this subpart,

(a) *Career appointee* has the meaning given in 5 U.S.C. 3132(a).

(b) *Day* means calendar day.

(c) *Suspension* has the meaning given in 5 U.S.C. 7501(2).

§ 752.603 Standard for action.

(a) An agency may take adverse action under this subpart only as set forth in 5 U.S.C. 7543(a).

(b) An agency may not take an adverse action against a career appointee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.604 Procedures: Adverse actions.

(a) *Statutory entitlements.* A career appointee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7543(b).

(b) *Notice of proposed action.* (1) The notice of proposed action shall inform the career appointee of his or her right to review the material which is relied on to support the reasons for action given in the notice.

(2) The agency may not use material which cannot be disclosed to the appointee or to his or her representative or designated physician under § 297.108(c)(1) of Part 297 of this title to support the reasons in the notice.

(c) *Appointee's answer.* (1) The agency shall give the career appointee a reasonable amount of time to review the material relied on to support its proposal and to prepare an answer and to secure affidavits, if he or she is otherwise in an active duty status.

(2) The agency shall designate an official to hear the career appointee's oral answer who has authority either to make or recommended a final decision on the proposed adverse action.

(3) The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides one in its regulations in accordance with § 752.604(g).

(d) *Exceptions.* (1) 5 U.S.C. 7543(b)(1) authorizes an exception to the 30 day advance written notice when the crime provision is invoked. The agency may require the career appointee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the career appointee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the action.

(2) The 30 days' advance written notice is not required for placing a career appointee in a nonduty status with pay during the notice period of a removal or a suspension for more than 14 days when the circumstances are such that retention of the career appointee in an active duty status:

(i) May be injurious to the appointee, his or her fellow workers, or the general public;

(ii) May result in damage to government property; or

(iii) May, because of the nature of the appointee's offense, reflect unfavorably on the public perception of the Federal service. The agency shall include in the notice the reasons for not retaining the appointee in an active duty status during the notice period of a removal or a suspension for more than 14 days. The agency may require the appointee to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time, not to exceed ten days.

(e) *Representation.* (1) 5 U.S.C. 7543(b)(3) provides that an appointee covered by this part is entitled to be represented by an attorney or other representative.

(2) An agency may disallow as an appointee's representative:

(i) An individual whose activities as a representative would cause a conflict of interest or position;

(ii) An employee of the agency whose release from his or her official position would give rise to unreasonable costs; or

(iii) An employee of the agency whose priority work assignments preclude his or her release.

(f) *Agency decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any reply of the career appointee or his or her representative made to a designated official. The agency shall deliver the notice of decision to the appointee at or before the time the action will be effective. The notice of decision shall inform the appointee of his or her appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7543(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral reply.

§ 752.605 Appeal rights: Adverse actions.

Under the provisions of 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

§ 752.606 Agency records.

The agency shall maintain copies of the adverse action record items specified in 5 U.S.C. 7543(e) and shall furnish them upon request as required by that subsection.

PART 754—SUITABILITY DISQUALIFICATION ACTIONS

Sec.

754.101 Scope.
754.102 Notice of proposed action.
754.103 Answer.
754.104 Decision.
754.105 Appeal rights.

Authority: 5 U.S.C. 1302, 3301, 3302, and 7701; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218; E.O. 11491, 3 CFR, 1966-1970 Comp., p. 861.

Source: 49 FR 1870, Jan. 16, 1984, unless otherwise noted.

§ 754.101 Scope.

(a) *Coverage.* This part sets forth the procedures to be followed when the Associate Director for Compliance and Investigations or his/her designee (referred to in this part as the official), acting under authority of 5 CFR Part 731, proposes to take or to instruct an agency to take, a final suitability disqualification action to remove, or to take other disciplinary action against an applicant or eligible for appointment in, or an appointee or employee in, the competitive service.

(b) *Definition.* In this part, "days" means calendar days and not, for example, work-days.

§ 754.102 Notice of proposed action.

The official shall notify the applicant, eligible, appointee, or employee (hereinafter, the "respondent") in writing of the proposed action and of the charges against him or her. The notice shall state the reasons, specifically and in detail, for the proposed action. The notice shall also state that the respondent has the right to answer this notice in writing. If the respondent is an employee who is no longer subject to investigation by OPM, the notice shall further state that the employee may also make an oral answer, as specified in § 754.103(a). The notice shall further inform the respondent of the time limits for answer as well as the address to which such answer should be made. The official shall send a copy of this notice to the agency, if any, that is involved. The notice shall be served upon the respondent by being mailed to the respondent's last known residence or duty station no less than 30 days prior to the effective date of the proposed adverse action. If the respondent is employed in the competitive service on the date the notice is served, the respondent shall be entitled to be retained in pay status during the notice period.

§ 754.103 Answer.

(a) *Respondent's answer.* A respondent may answer the charges in writing and furnish affidavits in support of the response. A respondent who is an employee may answer orally to the official. The respondent may be represented by a representative of the respondent's choice, and such representative shall be designated in writing to the official. To be timely an answer, whether it is oral, written, or both, shall be made to the official no more than 30 days after the date of the notice of proposed action. In the event that the employee who is no longer subject to investigation by OPM requests to make an oral answer, the official shall determine the time and place thereof. The official shall consider any answer that the respondent makes in reaching a decision.

(b) *Agency's answer.* In actions proposed by OPM under 5 CFR 5.3, the agency may also answer the notice of proposed adverse action. The time limit for filing an answer is 30 days from the date of the notice. The official shall consider any answer that the agency makes in reaching a decision.

§ 754.104 Decision.

The official shall notify the respondent and the agency of the decision. The decision shall be in writing, be dated, and inform the respondent of the reasons for the decision. The respondent shall also be informed that an adverse decision can be appealed.

§ 754.105 Appeal rights.

(a) A respondent may appeal an adverse decision of the official to the Merit Systems Protection Board under the provisions of the Board's regulations at 5 CFR Part 1201. Such actions may not be grieved under agency or negotiated grievance procedures.

(b) A respondent who appeals under this section and who is, at the time the final adverse action is taken, an employee in the competitive service, shall be entitled to be retained in a pay status until action on appeal, if any, is completed under Part 1201 of this title.

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

Subpart A—[Reserved]

Subpart B—General

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771.201 Purpose.
771.202 Definitions.
771.203 Agency coverage.
771.204 Employee coverage.
771.205 Grievance coverage.
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Subpart C—Establishment of Agency Administrative Grievance System

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771.302 Criteria.
771.303 Obligation of the grievant.

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771.304 Review by the Office of Personnel Management.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1943-1948 Comp., pp. 606-624; E.O. 11222, 3 CFR 1964-1969 Comp., p. 306.

SOURCE: 45 FR 9, Jan. 2, 1980, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—General

§ 771.201 Purpose.

This part sets forth the regulations under which each agency shall establish an agency administrative grievance system.

§ 771.202 Definitions.

In this part:

"Bargaining unit employee" means an employee included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations Authority for which a labor organization has been granted exclusive recognition.

"Employee" includes a former employee of an agency for whom a remedy can be provided.

"Grievance", except as provided in § 771.206 of this part, means a request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s) which is subject to the control of agency management.

"Grievance file" means a separate file which contains all documents related to the grievance, including but not limited to any statements of witnesses, records or copies thereof, the report of the hearing when one is held, statements made by the parties to the grievance, and the decision.

"Personal relief" means a specific remedy directly benefiting the grievant(s) and may not include a request for disciplinary or other action affecting another employee.

§ 771.203 Agency coverage.

Except as provided in § 771.206(a), this part applies to the executive agencies and military departments as defined by sections 102 and 105 of title 5, United States Code, and to those organizational units of the legislative and judicial branches having positions in the competitive service.

§ 771.204 Employee coverage.

(a) *Required coverage.* Except as provided in § 771.206(b), this part shall cover all nonbargaining unit employees of the agency.

(b) *Discretionary coverage.* An agency may extend the coverage of this part to bargaining unit employees consistent with the provisions of 5 U.S.C. 7121, or to applicants for employment with the agency.

§ 771.205 Grievance coverage.

Except as provided in § 771.206(c), this part applies to any matter of concern or dissatisfaction relating to the employment of an employee which is subject to the control of agency management, including any matter on which an employee alleges that coercion, reprisal, or retaliation has been practiced against him or her.

§ 771.206 Exclusions.

(a) *Agencies excluded.* This part does not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, the Defense Intelligence Agency, the National Security Agency, the Nuclear Regulatory Commission, the Tennessee Valley Authority, the Postal Rate Commission, and the U.S. Postal Service.

(b) *Employees excluded.* This part does not apply to:

(1) A noncitizen appointed under Civil Service Rule VIII, § 8.3 of this title;

(2) An alien appointed under section 1471(5) of title 22, United States Code;

(3) An individual paid from funds as defined in section 2105(c) of title 5 or section 4202(5) of title 38, United States Code;

(4) A physician, dentist, nurse, or other employee appointed under Chapter 73 of title 38, United States Code;

(5) A member of the Foreign Service of the United States covered under the Foreign Service Grievance System as defined in Part J of Title VI of the

Foreign Service Act of 1946, as amended; or

(6) An employee otherwise included under § 771.204(a) of this subpart when he or she is a member of a class of employees excluded from coverage by the Office on the recommendation of the head of the agency concerned.

(c) *Matters excluded.* (1) This part does not apply to:

(i) The content of published agency regulations and policy;

(ii) A decision which is appealable to the Merit Systems Protection Board or subject to final administrative review by the Office of Personnel Management or the Equal Employment Opportunity Commission under law or regulations of the Office or the Commission.

(iii) Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.

(iv) A preliminary warning notice of an action which, if effected, would be covered under the grievance system or excluded from coverage by paragraph (c)(1)(ii) of this section;

(v) A return of a Senior Executive Service career appointee to the General Schedule or another pay system during the one year period of probation or for less than fully successful executive performance under section 3592 of title 5, United States Code;

(vi) A reassignment of a Senior Executive Service appointee following the appointee's receipt of an unsatisfactory rating under section 4314 of title 5, United States Code;

(vii) An action which terminates a temporary promotion within a maximum period of two years and returns the employees to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;

(viii) An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with § 335.102(g).

(ix) The substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of subchapter I of chapter 43 of title 5, United States Code, and Part 430 of this title;

(x) The granting of or failure to grant an employee performance award or the adoption of or failure to adopt an employee suggestion or invention under sections 4503–4505, or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under section 4507 of title 5, United States Code;

(xi) The receipt of or failure to receive a performance award under section 5384 of title 5, United States Code, or a quality salary increase under section 5336 of title 5, United States Code;

(xii) A decision to grant or not to grant a general increase, merit increase, or performance award under the Performance Management and Recognition System, or a decision on the granting of or failure to grant cash awards or honorary recognition under 5 U.S.C. chapter 54 and Part 540 of this chapter;

(xiii) The termination under Subpart H of Part 315 of this title of a probationer for unsatisfactory performance;

(xiv) The termination under Subpart D of Part 359 of this title of an SES career appointee during probation for unsatisfactory performance.

(xv) A performance evaluation under subchapter II of chapter 43 of title 5, United States Code.

(xvi) An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which: (A) assigns the employee from one geographical location to another or (B) returns an employee from an overseas assignment.

(2) This part does not apply to the following actions unless the agency extends the coverage to any aspect of them:

(i) A return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period under section 3321(a)(2) of title 5, United States Code, and Subpart I of Part 315 of this title; and

(ii) A separation action not excluded by paragraph (c)(1) of this section.

(3) An agency may, in its discretion, exclude performance appraisals and/or ratings (under subchapter I of chapter 43 of title 5 United States Code, or Part 430 of this chapter) from coverage under this part.

[45 FR 9, Jan. 2, 1980; 45 FR 4338, Jan. 22, 1980, as amended at 45 FR 24856, Apr. 11, 1980; 46 FR 44416, Sept. 4, 1981; 48 FR 49491, Oct. 25, 1983; 50 FR 26965, July 1, 1985; 50 FR 35504, Aug. 30, 1985]

Subpart C—Establishment of Agency Administrative Grievance System

§ 771.301 Establishment and publication.

(a) *Establishment.* Each agency covered by this part shall establish and administer an agency grievance system in accordance with the criteria in § 771.302 of this subpart.

(b) *Publication.* Each agency shall publish and make available to employees copies of its administrative grievance procedures.

§ 771.302 Criteria.

The following criteria shall govern the establishment and administration of an agency administrative grievance system:

(a) Prompt consideration of each grievance, including reasonable time limits for processing the grievance.

(b) Procedures appropriate for the matter being grieved which provide the employee a reasonable opportunity to present a grievance and receive fair consideration of the matter being grieved. The procedures shall provide for fact-finding, when appropriate, which shall include a hearing when one is suitable to ascertain the circumstances concerning the grievance. Fact-finding procedures shall be carried out by a person(s) who has not been involved in the matter being grieved and who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in, the matter being grieved.

(c) Assurance to the grievant of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal in presenting a grievance;

(2) The right to be accompanied, represented, and advised by a representative of his or her own choosing, except that an agency may disallow the choice of an individual as a representative which would result in a conflict of interest or position, which would conflict with the priority needs of the agency, or which would give rise to unreasonable costs to the Government;

(3) A reasonable amount of official time to present the grievance if the employee is otherwise in a duty status; and

(4) The right to communicate with the servicing personnel office or a counselor of the agency.

(d) Assurance to the employee's representative of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal; and

(2) A reasonable amount of official time to present the grievance if the representative is an employee of the agency and is otherwise in a duty status;

(e) When fact-finding is utilized, establishment of a grievance file which is made available to the grievant and his or her representative for review and comment;

(f) At any time an employee places a grievance in writing, a written decision, which includes a report of findings and reasons for the determination, made by:

(1) An official at a higher level than any employee involved in any phase of the grievance, except when the head of the agency has been involved, or

(2) The official(s) designated to determine the disputed facts.

§ 771.303 Obligation of the grievant.

An employee in exercising the entitlement to present a grievance under this part shall:

(a) Comply with appropriate time limits established by the agency;

(b) Furnish sufficient detail to clearly identify the matter being grieved; and

(c) Specify the personal relief being requested.

§ 771.304 Review by the Office of Personnel Management.

The Office of Personnel Management shall review from time to time each agency administrative grievance system developed under this part to determine whether the administrative grievance system meets the requirements of this part. The Office shall require corrective action to bring a system which fails to meet the requirements into conformity. The Office does not act on a request by an employee to review the processing of, or the decision on, an individual grievance.

PART 792—FEDERAL EMPLOYEES' HEALTH AND COUNSELING PROGRAMS

Subpart A—Regulatory Requirements for Alcoholism and Drug Abuse Programs and Services for Federal Civilian Employees

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792.101 Statutory requirements.
792.102 General.
792.103 Coverage.
792.104 Responsibilities of the Office of Personnel Management.
792.105 Agency responsibilities.

Subpart B—[Reserved]

AUTHORITY: Sec. 201 of Pub. L 91-616, 84 Stat. 1849, as amended and transferred to sec. 520 of the Public Health Services Act by sec. 2(b)(13) of Pub. L. 98-24 (42 U.S.C. 290dd-1) and sec. 413 of Pub. L. 92-255, 86 Stat. 84, as amended and transferred to sec. 525 of the Public Health Service Act by sec. 2(b)(16)(A) of Pub. L. 98-24 (42 U.S.C. 290ee-1).

Subpart A—Regulatory Requirements for Alcoholism and Drug Abuse Programs and Services for Federal Civilian Employees

§ 792.101 Statutory requirements.

Sections 290dd-1 and 290ee-1 of 42 United States Code, provide that the Office of Personnel Management shall be responsible for developing and maintaining, in cooperation with the Secretary of the Department of Health and Human Services, and with other Federal departments and agencies, appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and/or drug problems. To the extent feasible, agencies are encouraged to extend services to families of alcohol and/or drug abusing employees and to employees who have family members who have alcohol and/or drug problems. Such programs and services shall make optimal use of existing government facilities, services, and skills.

[50 FR 16692, Apr. 29, 1985]

§ 792.102 General.

It is the policy of the Federal Government to offer appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and/or drug problems. Short-term counseling and/or referral, or offers thereof, shall constitute the appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse, alcoholism, and/or drug abuse required under 42 U.S.C. 290dd-1(a) and 290ee-1(a). Federal departments and agencies must establish programs to assist employees with these problems in accordance with the legislation cited in § 792.101.

[50 FR 16692, Apr. 29, 1985]

§ 792.103 Coverage.

This part applies to all positions in Executive agencies as defined in section 105 of Title 5 of the United States Code, and to those positions in the legislative and judicial branch of the Federal Government which are in the competitive service.

[49 FR 27921, July 9, 1984]

§ 792.104 Responsibilities of the Office of Personnel Management.

OPM shall provide overall leadership for the Government-wide alcoholism and drug abuse program in cooperation with the Secretary of Health and Human Services. To accomplish this, OPM shall develop and issue policy and program guidance, provide technical assistance to agencies, and determine the overall effectiveness of the Government-wide program, as well as those programs at individual agencies, based on program information required of agencies.

[49 FR 27921, July 9, 1984]

§ 792.105 Agency responsibilities.

(a) Agencies shall establish and administer programs through which practitioners who are knowledgeable in counseling and referral services can offer and provide employees who have alcohol and/or drug problems short-term counseling and/or referrals for long-term counseling or treatment.

(b) Agencies shall issue internal instructions implementing the requirements of 42 U.S.C. 290dd-1(a) and 290ee-1(a) and this regulation.

(c) Whenever a manager/supervisor becomes aware that a Federal employee's use of alcohol and/or drugs may be contributing to a performance or conduct deficiency, the manager/supervisor shall recommend counseling and refer the employee to the agency counseling program. If an employee fails to participate in any rehabilitative program or, having participated, the employee fails to bring conduct or performance up to satisfactory level, the agency shall evaluate the employee accordingly and initiate an appropriate performance-based or adverse action.

(d) As requested, agencies shall annually submit a report to OPM on their counseling activities for the past fiscal year at a time, and in a manner, set by OPM.

[49 FR 27921, July 9, 1984, as amended at 50 FR 16692, Apr. 29, 1985]

Subpart B—[Reserved]

PART 831—RETIREMENT

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AUTHORITY: 5 U.S.C. 8347, unless otherwise noted.

SOURCE: 33 FR 12498, Sept. 4, 1968, unless otherwise noted.

NOMENCLATURE NOTE: For nomenclature changes to Part 831, see 44 FR 76747, Dec. 28, 1979.

Subpart A—Administration and General Provisions

§ 831.101 Administration.

(a) OPM has charge of the adjudication of all claims arising under subchapter III of chapter 83 of title 5, United States Code, and of all matters directly or indirectly concerned with these adjudications.

(b) In the adjudication of claims arising under subchapter III of chapter 83 of title 5, United States Code, OPM shall consider and take appropriate action on counterclaims filed by the Government as set-offs against amounts in the Civil Service Retirement and Disability Fund.

(c) For purposes of this part, the term "Associate Director" means the Associate Director for Compensation in OPM.

[33 FR 12498, Sept. 4, 1968, as amended at 34 FR 17617, Oct. 31, 1969]

§ 831.102 Basic records.

Every Federal department, agency, corporation or branch, whether executive, legislative, or judicial, and the District of Columbia Government (included in this part collectively in the term department or agency) having employees or Members of Congress (hereinafter referred to in this part as Members) subject to subchapter III of chapter 83 of title 5, United States Code, shall initiate and maintain retirement accounts for those employees and Members as prescribed in Federal Personnel Manual Supplement 831-1.

(5 U.S.C. 8334)

§ 831.103 Evidence.

(a) Standard Form 2806 (Individual Retirement Record) is the basic record for action on all claims for annuity or refund, and those pertaining to deceased employees, deceased Members, or deceased annuitants.

(b) When the records of the department or agency concerned are lost, destroyed, or incomplete, the department or agency shall request the General Accounting Office, through OPM, to furnish the data that it considers necessary for a proper determination of the rights of the claimant. When an official record cannot develop the required information, the department, agency, or OPM should request inferior or secondary evidence which is then admissible.

§ 831.104 Application.

(a) Except as provided in paragraph (b) of this section, applications under subchapter III of chapter 83 of title 5, United States Code, shall be filed with OPM and shall be on forms prescribed by OPM.

(b) Applications to make deposit for military service shall be filed in accordance with Subpart U of this part.

[48 FR 38783, Aug. 26, 1983]

§ 831.105 Computation of interest.

(a) The computation of interest is on the basis of 30 days to the month. Interest is computed for the actual calendar time involved in each case, but whenever applicable the rule of average applies.

(b) Interest is allowed on current deductions and deposits at the rate of 4 percent per year to December 31, 1947, and 3 percent per year thereafter, compounded annually, to December 31, 1956. After December 31, 1956, except as provided below, interest is allowed at the rate of 3 percent per year, compounded annually, to date of final separation or transfer to a position that is not covered by the retirement system. After December 31, 1956, interest is not allowed:

(1) When an employee has one year or less of covered service,

(2) For any fractional part of a month in the total service, or

(3) For more than five years' civilian service.

(c) Interest at the rate of 3 percent per year through December 31, 1984, and, thereafter, at the yearly rate determined by the Secretary of Treasury, compounded annually, is allowed on voluntary contributions during periods of employment and, after the employee or Member has completed at least 5 years' civilian service, during periods of separation until the beginning date of annuity or death, whichever is earlier. For refund purposes, however, interest on voluntary contributions terminates on the date of the employee's or Member's final separation or on the date of the employee's or Member's last transfer to a position in which he or she is not subject to subchapter III of chapter 83 of title 5, United States Code

(d) For noncontributory service performed before October 1, 1982, and for redeposits of refunds paid on an application received by either the individual's employing agency or OPM before October 1, 1982, interest at the rate of 4 percent per year to December 31, 1947, and at the rate of 3 percent per year thereafter, compounded annually, is charged. Interest is charged on the outstanding balance of a deposit from the midpoint of each service period for which deposit is involved; interest is charged on the outstanding balance of a refund from the date the refund was paid. Interest is charged to the date of deposit or commencing date of annuity, whichever is earlier, except that interest is not charged for any period of separation from the service which began before October 1, 1956.

(e) For noncontributory service performed on or after October 1, 1982, and for redeposits of refunds paid on an application received by the individual's employing agency or OPM on or after October 1, 1982, interest is charged at the rate of 3 percent per year through December 31, 1984, and, thereafter, at the yearly rate determined by the Secretary of Treasury, compounded annually. Interest is charged on the outstanding balance of a deposit from the midpoint of each service period for which deposit is involved; interest is charged on the outstanding balance of a refund from the date the refund was paid. Interest is charged to the date of deposit.

(f) No interest is charged on a deposit for military service if that deposit is made before October 1, 1984, or within 2 years of the date that an individual first becomes an employee or Member under the civil service retirement system, whichever is later. When interest is charged on a deposit for military service, it is charged on the outstanding balance at the rate of 3 percent per year, compounded annually, from October 1, 1984, or 2 years from the date the individual first becomes an employee or Member, whichever is later, through December 31, 1984, and thereafter at the yearly rate determined by the Secretary of the Treasury.

(g) For calendar year 1985 and for each subsequent calendar year, OPM will publish a notice in the FEDERAL REGISTER to notify the public of the interest rate that will be in effect during that calendar year.

[33 FR 12498, Sept. 4, 1968, as amended at 47 FR 43637, Oct. 1, 1982; 48 FR 38783, Aug. 26, 1983]

§ 831.106 Disclosure of information.

(a)(1) The Office has in its possession or under its control records containing the following types of information:

(i) Documentation of Federal service subject to the Civil Service Retirement System.

(ii) Documentation of service credit and refund claims made under the Civil Service Retirement System.

(iii) Retirement and death claims files, including documents supporting the retirement application, health benefits and life insurance eligibility, medical records supporting disability claims, and designations of beneficiaries.

(iv) Claims review and correspondence files pertaining to benefits under the Federal Employees Health Benefits Program.

(v) Suitability determination files on applicants for Federal employment found unsuitable for employment on medical grounds.

(vi) Documentation of claims made for life insurance and health benefits by annuitants under a Federal Government retirement system other than the Civil Service Retirement System.

(vii) Documentation of voluntary contributions made by eligible individuals.

(viii) Health Unit medical records for OPM employees.

(2) These records may be disclosed to the individual to whom the information pertains, or with prior written consent of the individual to any agency or other person, *except* that medical evidence about which a prudent physician would hesitate to inform the individual, will be disclosed only to a licensed physician designated in writing for that purpose by the individual or by his or her representative.

(3) Civil service retirement records will be disclosed consistent with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), including, but not limited to, disclosures.

(i) Pursuant to a routine use promulgated for such records and printed in the Office's annual publication of notices of systems of records, except that;

(ii) A beneficiary designated in accordance with the provisions of the Civil Service Retirement law (5 U.S.C. 8342(b)) shall, during the lifetime of the designator, be disclosed to the designator only, at his or her signed, written request. Such beneficiary designations that may appear in records being disclosed must be removed before access to a record is permitted. If information pertaining to a designation of beneficiary is specifically asked for by a court of competent jurisdiction, it may be released to the court, but with a written notice that it is released under protest.

(4) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the Office shall not disclose information from the files, records, reports, or other papers and documents pertaining to a claim filed with the Office, whether potential, pending, or adjudicated. This information is deemed privileged and confidential.

(b) On written request the Office shall return, to the person entitled to them, certificates of discharges, adoption papers, marriage certificates, decrees of divorce, letters testamentary or of administration, when they are no longer needed in the settlement of the claim. If papers returned constitute part of the material and essential evidence in a claim, the Office shall retain in the file photo or other copies of them or of the parts which appear to be of evidential value.

(5 U.S.C. 552a and 8347(a))

[47 FR 12937, Mar. 26, 1982]

§ 831.107 Computation of time.

In computing a period of time prescribed by this part, the day of the action or event after which the designated period of time begins to run is not included. The last day of the period is included unless it is a Saturday, a Sunday, or a legal holiday; in this event, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

[33 FR 12498, Sept. 4, 1968. Redesignated at 44 FR 37889, June 29, 1979]

§ 831.108 Major reorganization, reduction in force, or transfer of function.

Determinations of major reorganization, major reduction in force, or major transfer of function for purposes of early optional retirement under section 8336(d)(2) of title 5, United States Code, as amended, will be made by the Office of Personnel Management only after receipt of written request to make the determinations from the agency, or his or her designee.

(5 U.S.C. 8336(d)(2))

[44 FR 44815, July 31, 1979; 45 FR 2837, Jan. 15, 1980]

§ 831.109 Initial decision and reconsideration.

(a) *Who may file.* Except as noted in paragraph (b) of this section any individual or agency whose rights or interests under the Civil Service Retirement System are affected by an initial decision of the Office of Personnel Management (OPM) may request OPM to review its initial decision.

(b) *Actions covered elsewhere.* (1) A request for reconsideration of termination of annuity payments under 5 U.S.C. 8311-22 shall be made in accordance with the procedures set out in Subpart K of this part.

(2) A request for reconsideration of a decision to collect a debt will be made in accordance with § 831.1304(b).

(c) *Initial decision.* A decision shall be considered an initial decision when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration, but will give an appeal right direct to the Merit Systems Protection Board (MSPB).

(d) *Reconsideration.* A request for reconsideration must be in writing, must include the individual's name, address, date of birth and claim number, if applicable, and must state the basis for the request.

(e) *Time limits on reconsideration.* (1) A request for reconsideration must be received by OPM within 30 calendar days from the date of the original decision.

(2) The representative of the Associate Director for Compensation responsible for reconsiderations may extend the time limit for filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration, the Associate Director's representative shall issue a final decision which shall be in writing, shall fully set forth the findings and conclusions of the reconsideration, and shall contain notice of the right to request an appeal provided in § 831.110. Copies of the final decision shall be sent to the individual, to any competing claimants and, where applicable, to the agency.

(g) *Competing claimants.* (1) When a competing claimant files a request for reconsideration under this section, the other competing claimants shall be notified of the request and given an opportunity to submit written substantiation of their claim.

(2) When a determination in favor of one claimant would affect another claimant, all claimants concerned will be notified of that decision and those adversely affected will be given an opportunity to request reconsideration. OPM shall not execute its decision

until the time limit for requesting reconsideration has expired. If reconsideration has been requested, OPM shall take no action after the reconsideration decision is rendered until the time limit to appeal has expired.

[45 FR 23632, Apr. 8, 1980, as amended at 49 FR 1330, Jan. 11, 1984; 50 FR 34664, Aug. 27, 1985]

§ 831.110 Appeals.

Appeals to MSPB. Except as noted in this paragraph, an individual or agency whose rights or interests under the Civil Service Retirement System (Subchapter III of Chapter 83, title 5, United States Code) are affected by a final decision of the representative of the Associate Director for Compensation, Office of Personnel Management, may request the Merit Systems Protection Board to review such decision in accord with procedures prescribed by the Board. Decisions of OPM and the Associate Director for Compensation made in accord with the procedures referenced in § 831.109(b)(1) are made under Subchapter II of Chapter 83, title 5, United States Code. Such decisions are not appealable to the Merit Systems Protection Board under 5 U.S.C. 8347(d).

[44 FR 37890, June 29, 1979, as amended at 45 FR 23633, Apr. 8, 1980; 48 FR 38784, Aug. 26, 1983]

Subpart B—Coverage

§ 831.201 Exclusions from retirement coverage.

(a) The following groups of employees in the executive branch of the Government are excluded from subchapter III of chapter 83 of title 5, United States Code:

(1) Employees serving under appointments limited to one year or less, except annuitants appointed by the President to fill unexpired terms of office on or after January 1, 1976.

(2) Intermittent employees—nonfull-time employees without a prearranged regular tour of duty.

(3) Employees whose salary, pay, or compensation on an annual basis is $12 a year or less.

(4) Member or patient employees in Government hospitals or homes.

(5) Employees paid on a contract or fee basis, except employees who are citizens of the United States who are appointed by contracts between the employees and the Federal employing authority which require their personal services and are paid on the basis of units of time.

(6) Employees paid on a piecework basis, except those whose work schedule provides for regular or full-time service.

(7) Intermittent alien employees engaged on work outside the continental limits of the United States.

(8) Employees serving under temporary appointments pending establishment of registers, or pending final determination of eligibility for permanent appointment.

(9) Officers in Charge, clerks in fourth-class post offices, substitute rural carriers, and special-delivery messengers at second- third-, and fourth-class post offices.

(10) Consular agents appointed under authority of section 551 of the Foreign Service Act of 1946 (22 U.S.C. 951).

(11) Employees serving under emergency-indefinite appointments not exceeding 5 years.

(12) United States citizeμns given "overseas limited appointments."

(13) Employees serving under nonpermanent appointments made pursuant to section 1 of Executive Order 10180 of November 13, 1950.

(14) Employees serving under nonpermanent appointments, designated as indefinite, made after January 23, 1955, the effective date of the repeal of Executive Order 10180.

(15) Employees serving under term appointments.

(16) Temporary employees of the Census Bureau employed under temporary limited appointments exceeding 1 year.

(17) Employees serving under limited term, limited emergency and noncareer (designated as indefinite) appointments in the Senior Executive Service.

(18) Health care employees of the National Health Service Corps serving under appointments limited to four years or less in health manpower shortage areas.

(b) Paragraph (a) of this section does not deny retirement coverage when (1) employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, except in the case of an alien employee whose duty station is located in a foreign country, (2) the employee is granted competitive status under legislation, Executive order, or the Civil Service rules and regulations, while he is serving in a position in the competitive service, or (3) the employee is granted merit status under 35 CFR Chapter I, Subchapter E.

(c) Members of the following boards and commissions of the government of the District of Columbia appointed on or after August 13, 1960, are excluded from subchapter III of chapter 83 of title 5, United States Code, except that this exclusion does not operate in the case of a member serving on August 13, 1960, who is reappointed on expiration of term without a break in service or after a separation from sersice of 3 days or less:

Board of Accountancy.
Board of Examiners and Registrars of Architects.
Board of Barber Examiners.
Boxing Commission.
Board of Cosmetology.
Board of Dental Examiners.
Electrical Board.
Commission on Licensure to Practice the Healing Arts.
Board of Examiners in the Basic Sciences.
Board of Examiners in Medicine and Osteopathy.
Motion Picture Operators' Board.
Nurses' Examining Board.
Board of Optometry.
Board of Pharmacy.
Plumbing Board.
Board of Podiatry Examiners.
Board of Registration for Professional Engineers.
Real Estate Commission.
Refrigeration and Air Conditioning Board.
Steam and Other Operating Engineers' Board.
Undertakers' Committee.
Board of Examiners of Veterinarian Medicine.

(d) The following groups of employees of the government of the District of Columbia, appointed on or after October 1, 1965, are excluded from subchapter III of chapter 83 of title 5, United States Code:

(1) Employees serving under appointments limited to one year or less, except temporary teachers of the District of Columbia public school system.

(2) Intermittent employees—nonfull-time employees without a prearranged regular tour of duty.

(3) Employees whose pay on an annual basis is $12.00 per year or less.

(4) Patient or inmate employees in District Government hospitals, homes or penal institutions.

(5) Employees paid on a contract or fee basis.

(6) Employees paid on a piecework basis, except those whose work schedule provides for regular or full-time service.

(7) Employees serving under temporary appointments pending establishment of registers, or pending final determination of eligibility for permanent appointment.

(e) Paragraph (d) of this section does not deny retirement coverage when (1) employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, or (2) the employee is granted competitive status under legislation, Executive order, or the Civil Service rules and regulations, while he is serving in a position in the competitive service.

(f) Also excluded are any temporary employees, appointed for one year or less, by the government of the District of Columbia under any program or project established pursuant to the Economic Opportunity Act of 1964 (42 U.S.C. 2701 et seq.), and summer trainees employed by the Government of the District of Columbia in furtherance of the President's Youth Opportunity Campaign.

(5 U.S.C. 8347(g))

[33 FR 12498, Sept. 4, 1968, as amended at 45 FR 24856, Apr. 11, 1980; 45 FR 46782, July 11, 1980; 47 FR 2285, Jan. 15, 1982; 48 FR 38784, Aug. 26, 1983]

Subpart C—Credit for Service

§ 831.301 Military service.

(a) *Service of an individual who first became an employee or Member under the civil service retirement system before October 1, 1982.* A period of honorable active service after December 31, 1956, in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States, or, after June 30, 1960, in the Regular Corps or Reserve Corps of the Public Health Service, or, after June 30, 1961, as a commissioned officer of the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey and Environmental Science Services Administration), performed before the date of separation on which civil service annuity entitlement is based shall be included in the computation of the annuity provided—

(1) The employee or Member has completed 5 years' (18 months' for survivors of employees or Members who die in service) civilian service;

(2) The employee or Member is not receiving (or was not receiving at the time of death) military retired pay awarded for reasons other than (i) service-connected disability incurred in combat with an enemy of the United States, (ii) service-connected disability caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 38, United States Code), or (iii) under chapter 67 of title 10, United States Code; and

(3)(i) The employee or Member (or his or her widow(er) is not entitled, or upon application would not be entitled, to monthly old-age or survivors benefits under § 202 of the Social Security Act (41 U.S.C. 402) based on the individual's wages or self-employment income, or

(ii) For an employee or Member (or his or her widow(er) who is entitled, or upon application would be entitled, to monthly old-age or survivors benefits under § 202 of the Social Security Act (41 U.S.C. 402) based on the individual's wages or self-employment income, the employee, Member, or survivor has completed a deposit in accordance with Subpart U of this part, for each full period of such military service performed after December 1956.

If a deposit has not been completed, periods of military service performed after December 31, 1956 (other than periods of military service covered by military leave with pay from a civilian position), are excluded from credit from and after the first day of the month in which the individual (or survivor) becomes entitled, or upon proper application would be entitled, to Social Security benefits under § 202. Military service performed prior to January 1957 is included in the computation of the annuity regardless of whether a deposit is made for service after December 31, 1956.

(b) *Service of an individual who first becomes an employee or Member under the civil service retirement system on or after October 1, 1982.* A period of honorable active service after December 31, 1956, in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States, or, after June 30, 1960, in the Regular Corps or Reserve Corps of the Public Health Service, or, after June 30, 1961, as a commissioned officer of the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey and Environmental Science Services Administration), performed before the date of separation on which civil service annuity entitlement is based shall be included in the computation of the annuity provided—

(1) The employee or Member has completed 5 years' (18 months' for survivors of employees or Members who die in service) civilian service;

(2) The employee or Member is not receiving (or was not receiving at the time of death) military retired pay awarded for reasons other than (i) service-connected disability incurred in combat with an enemy of the United States, (ii) service-connected disability caused by an instrumentality of war and incurred in the line of duty during a period of war (as that term is used in chapter 11 of the title 38, United States Code), or (iii) under chapter 67 of title 10, United States Code; and

(3) The employee or Member (or his or her widow(er)) had completed a de-

posit in an amount equal to 7 percent of his or her basic pay under section 204 of title 37, United States Code, (plus interest, if any) for each full period of such military service performed after December 1956. Military service performed prior to January 1957 is included in the computation of the annuity regardless of whether a deposit is made for service after December 31, 1956.

(c) *Military retirees and recipients of Veterans Administration benefits.* An employee or Member applying for annuity, who otherwise meets all conditions for receiving credit for military service, but who is in receipt of retired or retainer pay which bars credit for military service, may elect to waive the retired or retainer pay and have the military service added to civilian service for annuity computation purposes. An applicant for disability retirement, who is receiving a Veterans Administration pension or compensation in lieu of military retired or retainer pay, may elect to waive the retired or retainer pay and renounce the Veterans Administration pension or compensation and have the military service added to civilian service for annuity computation purposes.

[48 FR 38784, Aug. 26, 1983]

§ 831.302 Unused sick leave.

(a) For annuity computation purposes, the service of an employee who retires on immediate annuity or dies leaving a survivor entitled to annuity is increased by the days of unused sick leave to his credit under a formal leave system.

(b) An immediate annuity is one which begins to accrue not later than 1 month after the employee is separated.

(c) A formal leave system is one which is provided by law or regulation or operates under written rules specifying a group or class of employees to which it applies and the rate at which sick leave is earned.

(d) In general, 8 hours of unused sick leave increases total services by 1 day. In cases where more or less than 8 hours of sick leave would be charged for a day's absence, total service is increased by the number of days in the period between the date of separation and the date that the unused sic leave would have expired had the employee used it (except that holida falling within the period are treated work days, and no additional le credit is earned for that period).

(e) If an employee's tour of duty changes from part time to full time or full time to part time within 180 days before retirement, the credit for unused sick leave is computed as though no change had occurred.

[34 FR 17617, Oct. 31, 1969]

§ 831.303 Civilian service.

(a) *Periods of civilian service performed before October 1, 1982, for which retirement deductions have not been taken.* Periods of creditable civilian service performed by an employee or Member after July 31, 1920, but before October 1, 1982, for which retirement deductions have not been taken shall be included in determining length of service to compute annuity under subchapter III of chapter 83 of title 5, United States Code; however, if the employee, Member, or survivor does not elect either to complete the deposit describes by section 8334(c) of title 5, United States Code, or to eliminate the service from annuity computation, his or her annuity is reduced by 10 percent of the amount which should have been deposited (plus interest) for the period of noncontributory service.

(b) *Periods of civilian service performed on or after October 1, 1982, for which retirement deductions have not been taken and periods of service for which refunded contributions have not been redeposited.* A period of creditable civilian service performed by an employee or Member on or after October 1, 1982, for which retirement deductions have not been taken and a period of service for which refunded contributions have not been redeposited shall be included in determining length of service to compute the annuity under subchapter III of chapter 83 of title 5, United States Code, only if—

(1) The employee or Member subsequently becomes eligible for an annuity payable under subchapter III of chapter 83 of title 5, United States Code; and

(2) The employee, Member, or survivor makes a deposit (or redeposit) for the full period of service. If more than one distinct period of service is covered by a single refund, the periods of service covered by that refund are considered to be single full periods of service. However, in all other instances, a distinct period of nondeduction civilian service (i.e., a period of nondeduction service that is not interrupted by a break in service of more than three days) and a distinct period of redeposit civilian service (i.e., a period of redeposit service that is not interrupted by a break in service of more than three days) are considered as separate full periods of service, even when they are immediately consecutive. A period of nondeduction service which begins before October 1, 1982, and ends on or after that date is also considered two full periods of service: one ending on September 30, 1982, and the other beginning on October 1, 1982.

[48 FR 38785, Aug. 26, 1983]

Subpart D—Voluntary Contributions

§ 831.401 Making of voluntary contributions.

(a) The option to make voluntary contributions to the Civil Service Retirement and Disability Fund for the purchase of additional annuity is limited to those employees or Members (1) serving subject to subchapter III of chapter 83 of title 5, United States Code, or (2) whose applications for retirement are being adjudicated by OPM. To exercise this option, the employee or Member shall apply on the form prescribed by OPM.

(b) Voluntary contributions may not be accepted from an employee or Member who (1) has not deposited amounts covering all civilian service performed by him since August 1, 1920, or (2) has previously received a refund of voluntary contributions and is not again employed subject to subchapter III of chapter 83 of title 5, United States Code, after a separation of more than 3 calendar days.

(c) An employee or Member shall forward his voluntary contributions to the Office of Personnel Management, Washington, D.C. 20415, in the amount of $25 or multiple thereof, by money order, draft, or check payable to OPM. The total voluntary contributions may not exceed 10 percent of the aggregate annual basic pay received since August 1, 1920.

(d) An employee or Member may withdraw his voluntary contributions while he is still in the service, or after separation but before he receives any additional annuity based thereon. A person entitled to payment of lump-sum benefits under subchapter III of chapter 83 of title 5, United States Code, may withdraw the voluntary contributions on the death of an employee or Member or of a separated employee or Member not retired on annuity.

(e) OPM shall maintain the record and account of voluntary contributions of each employee or Member exercising the option to make such contributions.

§ 831.402 Purchase of additional annuity.

(a) Voluntary contributions may be used to purchase only one of the following types of annuity:

(1) Annuity without survivor benefit; or

(2) Annuity payable during the life of the employee or Member with one-half of the annuity to be payable after his death to a person, named at time of retirement, during the life of the named person.

(b) Any natural person may be designated as survivor under paragraph (a)(2) of this section.

(c) If the employee or Member elects an annuity without survivor benefit, each $100 credited to his voluntary contribution account, including interest, purchases additional annuity at the rate of $7 per annum, plus 20 cents for each full year, if any, he is over age 55 at date of retirement.

(d) If the employee or Member elects an annuity with survivor benefit, each $100 credited to his voluntary contribution account, including interest, purchases additional annuity at the rate of $7 per annum, plus 20 cents for each full year, if any, he is over age 55 at date of retirement, multiplied by the following percentage; 90

percent of such amount if the named person is the same age or older than the annuitant, or is less than 5 years younger than the annuitant; 85 percent if the named person is 5 but less than 10 years younger; 80 percent if the named person is 10 but less than 15 years younger; 75 percent if the named person is 15 but less than 20 years younger; 70 percent if the named person is 20 but less than 25 years younger; 65 percent if the named person is 25 but less than 30 years younger; and 60 percent if the named person is 30 or more years younger.

Subpart E—Eligibility for Retirement

§ 831.501 Time for filing applications.

(a) An employee or Member who is eligible for retirement may file an application for retirement with his or her department or agency within 30 days before, on, or any time after he or she reaches the requisite retirement age; a former employee or Member who is eligible for retirement may file an application for retirement with OPM within 30 days before, on, or any time after he or she meets the requisite retirement age. An applicant for disability retirement must submit an application for retirement before separation from service or within one year after separation from service, but this time limit may be extended in the case of an employee who is found to be incompetent. When the department or agency contemplates immediate reemployment of a retiring employee, the individual, the department, or agency shall submit to OPM with the Standard Form 2801 (Application for Retirement), a photocopy of Standard Form 2806 (Individual Retirement Record).

(b) An employee or Member who is retiring on account of voluntary or involuntary separation from the service may file an application for immediate or deferred annuity only after his separation from the service or not more than 30 days before the commencing date of his annuity.

(c) An employee or Member who is retiring on account of disability shall file an application for annuity with OPM before his separation from the service or within 1 year thereafter. OPM may waive this time limitation when the employee or Member was mentally incompetent on the date of separation or within 1 year, thereafter; in such a case the individual or his representative may file the application with OPM within 1 year after the date the individual is restored to competency, or a fiduciary is appointed, whichever is earlier. An application for annuity which is submitted on an inappropriate form, or on an appropriate form inadequately or incompletely executed, may be accepted as an informal claim.

(d) An employee's application for disability retirement shall not preclude or delay any other appropriate personnel action by the employing agency.

(e) When a department or agency files an application for disability retirement of an employee, it shall do so in accordance with Subpart L of this part. Medical documentation shall be obtained in accordance with Part 339 of this chapter.

[33 FR 12498, Sept. 4, 1968, as amended at 48 FR 38785, Aug. 26, 1983; 49 FR 1331, Jan. 11, 1984]

§ 831.502 Disability retirement.

(a) *Definitions.* For the purposes of this subpart:

"Commuting area", as used in this section, means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and reasonably can be expected to travel back and forth daily in their usual employment.

"Disabled" and "disability" mean unable or inability to render useful and efficient service because of disease or injury (1) in the employee's current position; or (2) in a vacant position in the same agency at the same grade or pay level for which the individual is qualified for reassignment. For the purpose of the preceding sentence, an employee of the United States Postal Service shall be considered not qualified for a reassignment if the reassignment is to a position in a different craft or is inconsistent with the terms of a collective bargaining agreement covering the employee.

"Examination" and "reexamination" mean an evaluation of evidentiary material related to the question of disability. Unless OPM exercises its choice of physician, the cost of providing medical documentation rests with the employee or disability annuitant, who will provide any information necessary to OPM's evaluation.

"Income from wages and/or self-employment" means money or property received by a disability annuitant as consideration for or in reward of personal services or a work product, or as a profit from a business (sole proprietorship, partnership, or corporation) wholly or partly owned by the disability annuitant and in which the disability annuitant has an active role in the management thereof; and also includes, for a disability annuitant reemployed by the Federal Government, any amount offset or deducted under the provisions of 5 U.S.C. 8344. Income is deemed earned in the calendar year in which it is received.

"Medical documentation," "documentation of a medical condition," and "physician" have the same meaning given these terms in § 339.102 of this chapter. "Medical documentation" submitted under this part shall be submitted from a physician.

"Qualified for reassignment" means able to meet the minimum requirements for the grade and series of the vacant position in question.

"Rate last payable" means the rate of annuity to which the annuitant was entitled on the date his/her disability annuity was last discontinued.

"Same grade or pay level" means, in regard to a vacant position within the same pay system as the position the employee presently occupies, the same grade and an equivalent amount of basic pay, as defined in 5 U.S.C. 8331(3); in regard to a vacant position in another pay system, an equivalent amount of basic pay, as defined in 5 U.S.C. 8331(3).

"Useful and efficient service" means (1) either acceptable performance of the critical or essential elements of the position or the ability to perform at that level; and (2) satisfactory conduct and attendance.

"Vacant position" means a position of the same tenure in the same commuting area which is not occupied.

(b) *Proof of claim.* No claim for disability retirement shall be allowed unless OPM determines that the claim should be granted based upon documentation provided by the applicant or the agency which demonstrates the following:

(1) A deficiency in service with respect to performance, conduct or attendance, or in the absence of any actual service deficiency, a showing that the medical condition is incompatible with either useful service or retention in the position;

(2) A medical condition which is defined as a disease or injury;

(3) A relationship between the service deficiency and the medical condition such that the medical condition has caused the service deficiency;

(4) The duration of the medical condition, past and expected, and a showing that the condition, in all probability, will continue for at least a year;

(5) The applicant became disabled while serving under the Civil Service Retirement System;

(6) The agency's inability to make reasonable accommodation to the employee's medical condition; and

(7) The absence of another available position, within the employing agency and commuting area, at the same grade or pay level and tenure, for which the employee is qualified for reassignment. For this part, placement in the agency is limited to those facilities in the commuting area that are serviced by the same appointing authority.

(c) *Examination.* OPM may offer the applicant a medical examination by a medical officer of the United States or a qualified physician or board of physicians designated by OPM, when it determines that additional medical evidence is necessary to make a decision on an application. The applicant's refusal to submit to an examination offered under these circumstances is grounds for disallowance of the application.

(d) *Reexamination.* (1) A disability annuitant may request reexamination under the provisions of this section at any time. A disability annuitant age 60 or over shall be reexamined only on his/her own request.

(2) Each disability annuitant who is under 60 years of age shall be reexamined annually under the direction of OPM, unless OPM determines that the disability is permanent. OPM may order a medical or other examination at any time to determine the facts relative to the nature and degree of disability of the annuitant. Failure to submit to reexamination shall result in suspension of annuity.

(3) When an examination shows that a disability annuitant has recovered, OPM shall discontinue the annuity at the expiration of 1 year from the date of the examination. When a recovered disability annuitant is reemployed by a department or agency within 1 year from the date of examination, OPM shall discontinue the annuity from the date of reemployment.

(e) *Income limitation.* (1) Each disability annuitant who, on December 31 of any calendar year, is under 60 years of age shall report to OPM, in a format acceptable to OPM, on or before the following February 15, his or her income from wages and/or self-employment for that calendar year. If the annuitant fails to submit the report, OPM may suspend annuity payments until the report is received and the annuitant's entitlement to continued annuity is determined on the basis of that report.

(2) In regard to income received prior to January 1, 1983: When, in each of two succeeding calendar years, a disability annuitant under age 60 has received income from wages and/or self-employment, equaling at least 80 percent of the current rate of basic pay of the position from which he or she retired, the annuitant's earning capacity is deemed restored. If earning capacity is restored, OPM shall discontinue payment of the annuity at the expiration of 1 year from the end of the 2-year period. When the disability annuitant is reemployed by a department or agency within this 1-year period, OPM shall discontinue payment of the annuity from the date of reemployment.

(3) In regard to income received after December 31, 1982: When, in any calendar year, a disability annuitant under age 60 has received income from wages and/or self-employment, equaling at least 80 percent of the current rate of basic pay of the position from which he or she retired, the annuitant's earning capacity is deemed restored. If earning capacity is deemed restored, OPM shall discontinue payment of the annuity 180 days from the end of the calendar year. One hundred and eighty days shall be computed on the basis that each month has 30 days. When the disability annuitant is reemployed by a department or agency within the 180-day period, OPM shall discontinue the annuity from the date of reemployment.

(f) *Reemployment.* (1) A disability annuitant may be reemployed in any position for which he/she is qualified. The employing agency shall notify OPM of the reemployment, including in the notification the nature of the position, the type of appointment, and the rate of pay.

(2) When a disability annuitant whom OPM has found recovered from disability, or restored to earning capacity, is reemployed while he/she is still entitled to disability annuity, OPM shall discontinue the annuity effective on the date of reemployment.

(3) If the disability annuitant has not been found recovered from disability, or restored to earning capacity, the employing agency shall offset the pay of the disability annuitant by the amount of annuity allocable to the period of reemployment.

(4) OPM may review the notification of reemployment, and order reexamination under the provisions of § 831.502(d), as it finds appropriate. In connection with the reexamination process, the employing agency and/or the employee may submit supporting medical evidence.

(5) When a reemployed disability annuitant is found recovered from disability, or restored to earning capacity, OPM shall discontinue the annuity from the date of its administrative finding, notify the agency of its determination, and instruct the agency to cease reducing pay by the amount of annuity allocable to the period of reemployment. If the appointment is subject to retirement deductions,

OPM shall instruct the agency to commence retirement deductions.

(6) A disability annuity awarded to a former National Guard Technician under the provisions of 5 U.S.C. 8337(h), in addition to being subject to the provisions of paragraphs (d) and (e) of this section, shall terminate when—

(i) The annuitant is reemployed by a department or agency, or

(ii) The annuitant declines an offer of employment with a department or agency which is in the same commuting area and of the same grade as, or a level equivalent to, the position from which the annuitant retired.

(g) *Reinstatement of annuity.* (1) When a recovered disability annuitant is not reemployed in a position in which he/she is subject to Civil Service Retirement coverage, and based on the results of a current examination, OPM finds that the disability has recurred, OPM shall reinstate the individual's disability annuity. The right to the reinstated annuity accrues from the date of the medical examination which demonstrated that the disability has recurred.

(2) When a disability annuitant whose earning capacity has been restored,

(i) Is not reemployed in a position in which he/she is subject to Civil Service Retirement coverage;

(ii) Has not recovered from the disability for which retired; and

(iii) Has again lost his/her earning capacity, as determined by OPM, before becoming 62 years of age;

OPM shall reinstate his/her disability annuity. A reinstated annuity is payable from January 1 of the year following the calendar year in which the earning capacity was lost. Earning capacity is deemed lost if during any calendar year the individual's income from wages and/or self-employment is less than 80 percent of the current rate of pay of the position from which he/she retired.

(3) A reinstated annuity shall be of the same type as the original annuity and will be paid at the rate last payable.

(4) The reinstatement of disability annuity terminates the right to any other annuity based on the same service, unless the annuitant makes a written election to receive the other annuity instead of the disability annuity.

(5) When an employee has a disability annuity reinstated, the agency shall offset the pay of the employee by the amount of annuity allocable to the period of reemployment, commencing with the date of the administrative determination of eligibility for reinstatement. Any retroactive payment of annuity for a period of employment prior to that date shall be reduced by the amount of pay earned during that period.

(5 U.S.C. 8337)

[46 FR 16654, Mar. 13, 1981, as amended at 46 FR 54497, Nov. 3, 1981; 48 FR 38785, Aug. 26, 1983; 49 FR 1331, Jan. 11, 1984]

§ 831.503 Automatic separation; exemption.

(a) When an employee meets the requirements for age retirement on any day within a month, he is subject to automatic separation at the end of that month. The department or agency shall notify the employee of the automatic separation at least 60 days in advance of the separation. If the department or agency fails through error to give timely notice, the employee may not be separated without his consent until the end of the month in which the notice expires.

(b)(1) The head of the agency, when in his or her judgment the public interest so requires, may exempt a law enforcement officer or firefighter from automatic separation until that employee becomes 60 years of age.

(2) The Secretary of Transportation and the Secretary of Defense, under such regulations as each may prescribe, may exempt an air traffic controller having exceptional skills and experience as a controller from automatic separation until that controller becomes 61 years of age.

(c) When a department or agency lacks authority and wishes to secure an exemption from automatic separation for one of its employees other than a Presidential appointee, beyond the age(s) provided by statute, i.e., age 60 for a law enforcement officer or firefighter, age 61 for an air traffic controller, and age 62 for an employee of the Alaska Railroad in Alaska or an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Commission, the department or agency head shall submit a recommendation to that effect to OPM.

(1) The recommendation shall contain:

(i) A statement that the employee is willing to remain in service;

(ii) A statement of facts tending to establish that his/her retention would be in the public interest;

(iii) The period for which the exemption is desired, which period may not exceed 1 year; and,

(iv) The reasons why the simpler method of retiring the employee and immediately reemploying him or her is not being used.

(2) The recommendation shall be accompanied by a medical certificate showing the physical fitness of the employee to perform his or her work.

(d) OPM may approve an exemption only before the automatic separation date applicable to the employee. For this reason, the department or agency shall forward the recommendation to OPM at least 30 days before this separation date.

(Sec. 1(3), E.O. 11228, 3 CFR, 1964-1965 Comp.)

[33 FR 12498, Sept. 4, 1968, as amended at 34 FR 593, Jan. 16, 1969; 48 FR 38786, Aug. 26, 1983]

§ 831.504 Retirement based on involuntary separation.

(a) *General.* An employee who would otherwise be eligible for retirement based on involuntary separation from the service is not entitled to an annuity under section 8336(d)(1) of title 5, United States Code, if the employee has declined a reasonable offer of another position.

(b) *Criteria for reasonable offer.* For the purposes of determining entitlement to annuity based on such involuntary separation, the offer of a position must meet all of the following conditions to be considered a reasonable offer:

(1) The offer must be made in writing;

(2) The employee must meet established qualification requirements; and

(3) The offered position must be—

(i) In the employee's agency, including an agency to which the employee with his or her function is transferred in a transfer of functions between agencies;

(ii) Within the employee's commuting area as defined in § 831.502(a) of this subpart, unless geographic mobility is a condition of the employee's employment;

(iii) Of the same tenure and work schedule; and

(iv) Not lower than the equivalent of two grades or pay levels below the employee's current grade or pay level, without consideration of the employee's eligibility to retain his or her current grade or pay under Part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the representative rate of the grade or pay level that is two grades below that of the current position shall be compared with the representative rate of the grade or pay level of the offered position. For this purpose, "representative rate" has the meaning given that term in § 536.102 of this chapter.

[48 FR 38786, Aug. 26, 1983]

Subpart F—Survivor Annuities

SOURCE: 50 FR 20070, May 13, 1985, unless otherwise noted.

§ 831.601 Purpose.

This subpart explains the annuity benefits payable in the event of the death of employees, retirees, and Members; the actions that employees, retirees, Members, and their current spouses, former spouses, and eligible children must take to qualify for survivor annuities; and the types of evidence required to demonstrate entitlement to provide survivor annuities or qualify for survivor annuities.

§ 831.602 Relation to other regulations.

(a) Subpart Q of this part contains information about former spouses' entitlement to survivor annuities based on provisions in court orders or court-approved property settlement agreements.

(b) Subpart T of this part contains information about entitlement to lump-sum death benefits.

(c) Parts 870, 871, 872 and 873 of this chapter contain information about coverage under the Federal Employees' Group Life Insurance Program.

(d) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(e) Section 831.109 contains information about the administrative review rights available to a person who has been denied a survivor annuity or an opportunty to make an election under this subpart.

§ 831.603 Definitions.

As used in this subpart—

"CSRS" means subchapter III of chapter 83 of title 5, United States Code.

"Current spouse" means a living person who is married to the employee, Member, or retiree at the time of the employee's, Member's, or retiree's death.

"Current spouse annuity" means a recurring benefit under CSRS that is payable (after the employee's, Member's, or retiree's death) to a current spouse who meets the requirements of § 831.618.

"Deposit" means a deposit required by the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98-615, 98 Stat. 3195. "Deposit," as used in this subpart does not include a service credit deposit or redeposit under sections 8334(c) or (d) of title 5, United States Code.

"First regular monthly payment" means the first annuity check payable on a recurring basis (other than an estimated payment or an adjustment check) after OPM has initially adjudicated the regular rate of annuity payable under CSRS and has paid the annuity accrued since the time of retirement. The "first regular monthly payment" is generally preceded by estimated payments before the claim can be adjudicated and by an adjustment check (including the difference between the estimated rate and the initially adjudicated rate).

"Former spouse" means a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree.

"Former spouse annuity" means a recurring benefit under CSRS that is payable to a former spouse after the employee's, Member's, or retiree's death.

"Fully reduced annuity" means the recurring payments under CSRS received by a retiree who has elected the maximum allowable reduction in annuity to provide a current spouse annuity and/or a former spouse annuity or annuities.

"Insurable interest annuity" means the recurring payments under CSRS to a retiree who has elected a reduction in annuity to provide a survivor annuity to a person with an insurable interest in the retiree.

"Marriage" means a marriage recognized in law or equity under the whole law of the jurisdiction with the most significant interest in the marital status of the employee, Member, or retiree unless the law of that jurisdiction is contrary to the public policy of the United States. If a jurisdiction would recognize more than one marriage in law or equity, the Office of Personnel Management (OPM) will recognize only one marriage, but will defer to the local courts to determine which marriage should be recognized.

"Member" means a Member of Congress.

"Net annuity" means the net annuity as defined in § 831.1703.

"Partially reduced annuity" means the recurring payments under CSRS to a retiree who has elected less than the maximum allowable reduction in annuity to provide a current spouse annuity or a former spouse annuity.

"Qualifying court order" means a court order that meets the qualifications of § 831.1704.

"Retiree" means a former employee or Member who is receiving recurring payments under CSRS based on service by the employee or Member. "Retiree," as used in this subpart, does not include a current spouse, former spouse, child, or person with an insurable interest receiving a survivor annuity.

"Self-only annuity" means the recurring unreduced payments under CSRS to a retiree with no survivor annuity to anyone.

"Time of retirement" means the date when a retired employee's or Member's annuity entitlement commences.

§ 831.604 Election at time of retirement of fully reduced annuity to provide a current spouse annuity.

(a) A married employee or Member retiring under CSRS will receive a fully reduced annuity to provide a current spouse annuity unless—

(1) The employee or Member, with the consent of the current spouse, elects a self-only annuity, a partially reduced annuity, or a fully reduced annuity to provide a former spouse annuity, in accordance with § 831.605(b) or § 831.607; or

(2) The employee or Member elects a self-only annuity, a partially reduced annuity or a fully reduced annuity to provide a former spouse annuity, and current spousal consent is waived in accordance with § 831.608.

(b) Qualifying court orders that award former spouse annuities prevent payment of current spouse annuities to the extent necessary to comply with the court order and § 831.614.

§ 831.605 Election at time of retirement of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a) An unmarried employee or Member retiring under CSRS may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or annuities.

(b) A married employee or Member retiring under CSRS may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or annuities instead of a fully reduced annuity to provide a current spouse annuity, if the current spouse consents to the election in accordance with § 831.607 or spousal consent is waived in accordance with § 831.608.

(c) An election under paragraph (a) or (b) of this section is void if it—

(1) Conflicts with a qualifying court order; or

(2) Would cause the total of current spouse annuities and former spouse annuities payable based on the employee's or Member's service to exceed 55 percent of the self-only annuity to which the employee or Member would be entitled.

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the month after the former spouse dies or remarries before age 55, unless—

(1) The retiree elects, within 2 years after the former spouse's death or remarriage, to continue the reduction to provide or increase a former spouse annuity for another former spouse, or to provide or increase a current spouse annuity; or

(2) A qualifying court order requires the retiree to provide another former spouse annuity.

§ 831.606 Election of insurable interest annuity.

(a) At the time of retirement, an employee or Member in good health, who is applying for a non-disability annuity, may elect an insurable interest annuity. Spousal consent is not required, but an election under this section does not exempt a married employee or Member from the provisions of § 831.604(a).

(b) An insurable interest annuity may be elected by an employee or Member electing a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity or a former spouse annuity or annuities.

(c) An employee or Member may elect an insurable interest annuity to benefit a current or former spouse who, upon the retiree's death, will also be entitled to a current spouse annuity or a former spouse annuity.

(d) To elect an insurable interest annuity, an employee or Member must indicate the intention to make the election on the application for retirement and must submit evidence to demonstrate that he or she is in good health. OPM may also require a medical examination to demonstrate that the employee or Member is in good health.

(e) An insurable interest annuity may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

(i) The current spouse;

(ii) A blood or adopted relative closer than first cousins;

(iii) A former spouse;

(iv) A person to whom the employee or Member is engaged to be married;

(v) A person with whom the employee or Member is living in a relationship which would constitute a common-law marriage in jurisdictions recognizing common-law marriages.

(2) When an insurable interest in not presumed, the employee or Member must submit affidavits from one or more persons with personal knowledge of the named beneficiary's insurable interest in the employee or Member. The affidavits must set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member.

(3) The employee or Member may be required to submit documentary evidence to establish the named beneficiary's date of birth.

(f) After receipt of all required evidence to support an election of an insurable interest annuity, OPM will notify the employee or Member of initial monthly annuity rates with and without the election of an insurable interest annuity and the initial rate payable to the named beneficiary. No election of an insurable interest annuity is effective unless the employee or Member confirms the election in writing, dies, or becomes incompetent no later than 60 days after the date of the notice described in this paragraph.

(g) When an employee or Member elects both an insurable interest annuity and a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity and/or a former spouse annuity or annuities, each reduction is computed based on the self-only annuity computation. The combined reduction may exceed the maximum 40 percent reduction in the retired employee's or Member's annuity permitted under section 8339(k)(1) of title 5, United States Code, applicable to insurable interest annuities.

(h) Except as provided in § 831.625(d), if a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity has also elected an insurable interest annuity to benefit a current spouse and if the eligible former spouse dies or remarries before age 55 and no other former spouse is entitled to a survivor annuity based on an election made in accordance with § 831.612 or a qualifying court order, the retiree may elect, within 2 years after the former spouse's death or remarriage, to convert the insurable interest annuity to a fully reduced annuity to provide a current spouse annuity, effective on the first day of the month following the death or remarriage of the former spouse.

(i) Upon the death of the current spouse, a retiree whose annuity is reduced to provide both a current spouse annuity and an insurable interest benefit for a former spouse is not permitted to convert the insurable interest annuity to a reduced annuity to provide a former spouse annuity.

(j) An employee or Member may name only one natural person as the named beneficiary of an insurable interest annuity. OPM will not accept the designation of contingent beneficiaries and such a designation is void.

§ 831.607 Election of a self-only annuity or partially reduced annuity by married employees and Members.

(a) A married employee may not elect a self-only annuity or a partially reduced annuity to provide a current spouse annuity without the consent of the current spouse or a waiver of spousal consent by OPM in accordance with § 831.608.

(b) Evidence of spousal consent or a request for waiver of spousal consent must be filed on a form prescribed by OPM.

(c) The form will require that a notary public or other official authorized to administer oaths certify that the current spouse presented identification, gave consent, signed or marked the form, and acknowledged that the consent was given freely in the notary's or official's presence.

§ 831.608 Waiver of spousal consent requirement.

(a) The spousal consent requirement will be waived upon a showing that the spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(1) A judicial determination that the spouse's whereabouts cannot be determined; or

(2) (i) Affidavits by the employee or Member and two other persons, at least one of whom is not related to the employee or Member, attesting to the inability to locate the current spouse and stating the efforts made to locate the spouse; and

(ii) Documentary corroboration such as tax returns filed separately or newspaper stories about the spouse's disappearance.

(b) The spousal consent requirement will be waived based on exceptional circumstances if—

(1) The employee or Member is considered unmarried at the time of retirement based on § 831.610; or

(2) The employee or Member presents a judicial determination regarding the current spouse that would warrant waiver of the consent requirement based on exceptional circumstances.

§ 831.609 Changes of election before final adjudication.

An employee or Member may name a new survivor or change his election of type of annuity if, not later than 30 days after the date of the first regular monthly payment, the named survivor dies or the employee or Member files with OPM a new written election. All required evidence of spousal consent or justification for waiver of spousal consent, if applicable, must accompany any new written election under this section.

§ 831.610 Marital status at time of retirement.

An employee or Member is unmarried at the time of retirement for all purposes under this subpart only if the employee or Member was unmarried on the date that the annuity begins to accrue.

§ 831.611 Changes of election after final adjudication.

Except as provided in section 8339 (j) or (k) of title 5, United States Code or § 831.621 or § 831.623, an employee or Member may not revoke or change the election or name another survivor, later than 30 days after the date of the first regular monthly payment.

§ 831.612 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(b) An election under paragraph (a) of this section will not be permitted—

(1) If it conflicts with a qualifying court order; or

(2) If it would cause the combined current and former spouse annuities to exceed 55 percent of the retiree's annuity; or

(3) In the case of a married retiree, if the current spouse does not consent to the election on the form described in § 831.607(c) and spousal consent is not waived by OPM in accordance with § 831.608; or

(4) To the extent that it provides a former spouse annuity for the spouse who was married to the retiree at the time of retirement in an amount that is inconsistent with any joint designation or waiver made at the time of retirement under § 831.604 (a)(1) or (a)(2).

(c) An election under this section is not permitted unless the retiree agrees to deposit the amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraph (a) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(d) The annuity reduction under this section terminates under the conditions stated in § 831.605(d).

§ 831.613 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a current spouse annuity.

(a) In cases of retirees who retired before May 7, 1985:

(1) A retiree who was unmarried at the time of retirement may elect, within 1 year after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) A retiree who was married and elected a fully reduced annuity or a partially reduced annuity at the time of retirement may elect, within 1 year after a post-retirement marriage, to provide a current spouse annuity.

(3) The reduction under paragraph (a)(1) or (a)(2) of this section commences on the first day of the month beginning 1 year after the date of the post-retirement marriage.

(b) In cases involving retirees who retired on or after May 7, 1985:

(1) Except as provided in paragraph (b)(3) of this section, a retiree who was unmarried at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) Except as provided in paragraph (b)(3) of this section, a retiree who was married at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity if—

(i) The retiree was awarded a fully reduced annuity under § 831.604 at the time of retirement; or

(ii) The election at the time of retirement was made with a waiver of spousal consent in accordance with § 831.608; or

(iii) The marriage at the time of retirement was to a person other than the spouse who would receive a current spouse annuity based on the post-retirement election.

(3) An election under paragraph (b)(1) or (b)(2) of this section is not effective if it conflicts with a qualifying court order or would cause the combined current and former spouse annuities to exceed 55 percent of the retiree's annuity.

(4) A retiree making an election under this section must deposit an amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraph (b)(1) or (b)(2) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(5) Any reduction in an annuity to provide a current spouse annuity will terminate effective on the first day of the month after the marriage to the current spouse ends, unless—

(i) The retiree elects, within 2 years after a divorce terminates the marriage, to continue the reduction to provide for a former spouse annuity; or

(ii) A qualifying court order requires the retiree to provide a former spouse annuity.

§ 831.614 Division of a survivor annuity.

(a) Except as provided in § 831.622, the maximum combined total of all current and former spouse annuities (not including any benefits based on an election of an insurable interest annuity) payable based on the service of a former employee or Member equals 55 percent of the rate of the self-only annuity that otherwise would have been paid to the employee, Member, or retiree.

(b) By using the elections available under this subpart or to comply with a court order under Subpart Q, a survivor annuity may be divided into a combination of former spouse annuities and a current spouse annuity so long as the aggregate total of current and former spouse annuities does not exceed the maximum limitation in paragraph (a) of this section.

(c) Upon termination of former spouse annuity payments because of death or remarriage of the former spouse, or by operation of a court order, the current spouse will be entitled to a current spouse annuity or an increased current spouse annuity if—

(1) The employee or Member died while employed in a position covered under CSRS; or

(2) The current spouse was married to the employee or Member continuously from the time of retirement and did not consent to an election not to provide a current spouse annuity; or

(3) The current spouse married a retiree after retirement and the retiree elected, under § 831.613, to provide a current spouse annuity for that spouse in the event that the former spouse annuity payments terminate.

§ 831.615 Child's annuity during school attendance.

For a child to be eligible for continuation of annuity beyond age 18 because of student status, the child, in addition to meeting all other requirements applicable to a child survivor who has not attained age 18, must present a certificate on a form prescribed by OPM from the educational or training institution that certifies that the child is regularly pursuing a full-time day or evening course of resident study or training. For this purpose, a full-time course of resident study or training means a day or evening noncorrespondence course that contemplates school attendance at the rate of at least 36 weeks per academic year with a subject load sufficient, if successfully completed, to attain the educational or training objective within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

§ 831.616 Proof of dependency.

(a) To be eligible for survivor annuity benefits, a child must have been dependent on the employee, Member, or retiree at the time of the employee's, Member's, or retiree's death.

(b) A child is considered to have been dependent on the deceased employee, Member, or retiree if he or she is—

(1) A legitimate child; or

(2) An adopted child; or

(3) A child who lived with, and for whom a petition of adoption was filed by, the employee, Member, or retiree, and who was adopted by the surviving spouse of the employee, Member, or retiree after the employee's, Member's, or retiree's death; or

(4) A stepchild or recognized natural child who lived with the employee, Member, or retiree in a regular parent-child relationship at the time of the employee's, Member's, or retiree's death; or

(5) A recognized natural child for whom a judicial determination of support was obtained; or

(6) A recognized natural child to whose support the employee, Member, or retiree made regular and substantial contributions.

(c) The following are examples of proofs of regular and substantial support. More than one of the following proofs may be required to show support of a natural child who did not live with the employee, Member, or retiree in a regular parent-child relationship and for whom a judicial determination of support was not obtained.

(1) Evidence of eligibility as a dependent child for benefits under other State or Federal programs; and

(2) Proof of inclusion of the child as a dependent on the decedent's income tax returns for the years immediately before the employee's, Member's, or retiree's death; and

(3) Cancelled checks, money orders, or receipts for periodic payments received from the employee, Member, or retiree for or on behalf of the child; and

(4) Evidence of goods or services that show regular contributions of considerable value; and

(5) Proof of coverage of the child as a family member under the employee's Member's, or retiree's Federal Employees Health Benefits enrollment; and

(6) Other proof of a similar nature that OPM may find to be sufficient to demonstrate support or parentage.

(d) Survivor benefits may be denied—

(1) If evidence shows that the deceased employee, Member, or retiree did not recognize the claimant as his or her own despite a willingness to support the child; or

(2) If evidence casts doubt upon the parentage of the claimant, despite the deceased employee's, Member's, or retiree's recognition and support of the child.

§ 831.617 Rates of child annuities.

(a) (1) Subject to paragraphs (a)(2) and (a)(3) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(1) (A) through (C) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, whenever a deceased employee, Member, or retiree is survived by a current spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee, Member or retiree.

(2) When paragraph (a)(1) of this section applies because of the existence of a current spouse:

(i) Paragraph (a)(1) of this section applies even if the current spouse is not entitled to a current spouse annuity.

(ii) Paragraph (a)(1) of this section applies to all children of the former employee or Member, including children who are not the offspring of the current spouse.

(3) When paragraph (a)(1) of this section applies only because of the existence of a former spouse who is the natural or adoptive parent of a surviving child of the employee, Member, or retiree:

(i) Paragraph (a)(1) of this section applies even if the former spouse is not entitled to a former spouse annuity.

(ii) Paragraph (a)(1) of this section applies to all children of the former employee or Member, including children who are not the offspring of the former spouse.

(iii) Paragraph (a)(1) of this section does not apply to any child of the former employee or Member if the former spouse has no offspring entitled to an annuity.

(b) The rate of annuity payable to a child survivor is computed under section 8341(e)(1) (i) through (iii) of title 5, United States Code, with adjustment in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member, or retiree is not survived by a current spouse or a former spouse who is the natural or adoptive parent of a surviving child (who is entitled to a child's annuity) of the former employee or Member.

(c) On the death of the current spouse or the former spouse or termination of the annuity of a child, the annuity of any other child or children is recomputed and paid as though the spouse, former spouse, or child had not survived the former employee or Member.

§ 831.618 Marriage duration requirements.

(a) The surviving spouse of a retiree who retired on or after May 7, 1985, or of an employee or Member who dies while serving in a position covered by CSRS on or after May 7, 1985, can qualify for a current spouse annuity only if—

(1) The surviving spouse and the employee, Member, or retiree had been married for at least 9 months, as explained in paragraph (b) of this section; or

(2) A child was born of the marriage, as explained in paragraph (c) of this section; or

(3) The death of the employee, Member, or retiree was accidental as explained in paragraph (d) of this section.

(b) For satisfying the 9-month marriage requirement of paragraph (a)(1) of this section, the aggregate time of all marriages between the spouse applying for a current spouse annuity and the employee, Member, or retiree is included.

(c) For satisfying the child-born-of-the-marriage requirement of paragraph (a)(2) of this section, any child, including a posthumous child, born to the spouse and the employee, Member, or retiree is included. This includes a child born out of wedlock or of a prior marriage between the same parties.

(d)(1) A death is accidental if it results from homicide or from bodily injuries incurred solely through violent, external, and accidental means. The term "accidental" does not include a death—

(i) Caused wholly or partially, directly or indirectly, by disease or bodily or mental infirmity, or by medical or surgical treatment or diagnosis thereof; or

(ii) Caused wholly or partially, directly, or indirectly, by ptomaine, by bacterial infection, except only septic infection of and through a visible wound sustained solely through violent, external, and accidental means; or

(iii) Caused wholly or partially, directly or indirectly, by hernia, no matter how or when sustained; or

(iv) Caused by or the result of intentional self-destruction or intentionally self-inflicted injury, while sane or insane.

(2) A State judicial or administrative adjudication of the cause of death for criminal or insurance purposes is conclusive evidence of whether a death is accidental.

(3) A death certificate showing the cause of death as accident or homicide is *prima facie* evidence that the death was accidental.

[50 FR 20070, May 13, 1985; 50 FR 21031, May 22, 1985]

§ 831.619 Time for filing applications for death benefits.

(a) A survivor of a deceased employee, Member, or retiree, may file an application for annuity, personally or through a representative, at any time within 30 years after the death of the employee, Member, or retiree.

(b) A former spouse claimng eligibility for an annuity based on § 831.622 may file an application at any time between November 8, 1984 and May 9, 1987. Within this period, the date that the first correspondence indicating a desire to file a claim is received by OPM will be treated as the application date for meeting timeliness deadlines and determining the commencing date of the survivor annuity under § 831.622 if the former spouse is eligible on that date.

§ 831.620 Commending and terminating dates of survivor annuities.

(a) A survivor annuity payable from the Civil Service Retirement and Disability Fund commences the day after (1) death of the employee, Member, or retiree; (2) attainment of age 50 when, under section 12 of the Civil Service Retirement Act Amendments of February 29, 1948, the annuity is deferred until age 50; (3) a claim is received in OPM when an annuity is authorized for unremarried widows and widowers by section 2 of the Civil Service Retirement Act Amendments of June 25, 1958, 72 Stat. 218; or (4) the later of the date of death of the retiree or the first day of the second month after the date the application for annuity is filed under § 831.622.

(b) A survivor annuity terminates at the end of the month preceding death or any other terminating event.

(c) A current spouse annuity terminated for reasons other than death may be restored under conditions defined in sections 8341(e)(2) and 8341(g) of title 5, United States Code.

(d) A survivor annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. An annuity does not accrue for the 31st day of any month, except in the initial month if the survivor's (of a deceased employee) annuity commences on the 31st day. For accrual purposes, the last day of a 28-day month constitutes 3 days and the last day of a 29-day month constitutes 2 days.

§ 831.621 Election by a retiree who retired before May 7, 1985, to provide a former spouse annuity.

(a) A retiree who retired before May 7, 1985, including a retiree receiving a fully reduced annuity to provide a current spouse annuity, may elect a fully reduced annuity to provide a former spouse annuity.

(b) The election should be made by letter addressed to OPM. The election must—

(1) Be in writing; and

(2) Agree to pay any deposit due under paragraph (d) of this section; and

(3) Be signed by the retiree; and

(4) Be filed with OPM before May 9, 1986.

(c)(1) If a retiree who is receiving an insurable interest annuity elects a fully reduced annuity under this seciton to benefit the same person, the insurable interest annuity terminates. A retiree who is receiving an insurable interest annuity at the time that an annuity is elected under this section does not owe any further deposit if a fully reduced annuity is elected under this section.

(2) A retiree who elects a fully reduced annuity under this section, to provide a former spouse annuity for a former spouse for whom the retiree had elected (during the marriage to that former spouse) a reduced annuity to provide a current spouse annuity must deposit an amount equal to the differences between the rate of annuity actually paid to the retiree and the amount of annuity which would have been paid had a fully reduced annuity been paid continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each difference is attributable.

(3) A retiree who elects a fully reduced annuity under this section, and is not covered under paragraph (c)(1) or (c)(2) of this section, must deposit an amount equal to the difference between the self-only annuity and a fully reduced annuity since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each difference is attributable.

(d) If a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity elects a fully reduced annuity under this section to provide a former spouse annuity, the annuity will be reduced separately to provide for the current and former spouse annuities. Each separate reduction will be computed based on the self-only annuity, and the separate reductions are cumulative.

(e)(1) In response to a retiree's inquiry about providing a former spouse annuity under this section, OPM will send an application form. This application will include instructions to assist the retiree in estimating the amount of reduction in the annuity to provide the former spouse annuity and the amount of the required deposit. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity; and

(ii) The rate of the potential former spouse annuity; and

(iii) The amount of the deposit, plus interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

(3) The notice under paragraph (e)(2) of this section will advise the retiree that the deposit will be collected in installments under § 831.624, unless lump-sum payment is made within 60 days from the date of the notice.

(4) OPM will reduce the annuity and begin collection of the deposit in installments effective with the first check payable more than 60 days after the date on the notice required under paragraph (e)(2) of this section.

§ 831.622 Annuities for former spouses of employees or Members retired before May 7, 1985.

(a) The former spouse of a retiree who retired before May 7, 1985, is entitled, after the death of the retiree, to a survivor annuity equal to 55 percent of the annuity of the retiree on whose service the survivor annuity is based if the former spouse meets all of the following requirements:

(1) The former spouse's marriage to the retiree was dissolved after September 14, 1978. The date of dissolution of a marriage is the date when the marriage between the former spouse and the retiree ended under the law of the jurisdiction that terminated the marriage, rather than the date when restrictions on remarriage ended. The date of entry of the decree terminat-

ing the marriage will be rebuttably presumed to be the date when the marriage was dissovled.

(2) The former spouse was married to the retiree for at least 10 years of the retiree's creditable civilian service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and Subpart C.

(3) The former spouse is not receiving any other employer-provided retirement or survivor annuity.

(i) Employer-provided retirement or survivor annuity means recurring retirement or survivor payments (other than benefits under title II of the Social Security Act or under section 8345(j) of title 5, United States Code) that are made by, on behalf of, or under the terms of a contract with an employer and are based on past service of the former employee or Member or the former spouse.

(ii) Employer-provided retirement or survivor annuity to which the former spouse is entitled but not actually receiving because of a failure to apply for the benefit or because the benefits were waived (and the waiver was accepted by the retirement or survivor benefit plan) are not considered employer-provided benefits for purposes of this section.

(4) The former spouse has not remarried before reaching age 55.

(5) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 9, 1987.

(6) The former spouse is at least 50 years old when filing the application.

(b) (1) Application must be filed on the form prescribed for that purpose by OPM. The application form will require the former spouse to certify under the penalty provided by section 1001 of title 18, United States Code, that he or she meets the requirements listed in paragraph (a) of this section.

(2) In addition to the application form required in paragraph (b)(1) of this section, the former spouse must submit proof of his or her age and the date when the marriage to the retiree commenced, and a certified copy of the divorce decree terminating the marriage to the retiree.

(3) Former spouses applying for benefits under this section must meet the requirements of paragraph (a) of this section at the time of application and at all times while a former spouse annuity, under this section, is being paid to that former spouse. A former spouse who is receiving a former spouse annuity under this section must notify OPM within 30 days after he or she ceases to meet any of the qualifications in paragraph (a) of this section.

(c) Survivor annuities payable under this section commence on the later of the day after the date of death of the retiree or the first day of the second month after the application is filed under § 831.619(b).

(d) Cost-of-living adjustments under section 8340 of title 5, United States Code, are applicable to annuities payable under this section.

§ 831.623 Second chance elections to provide survivor benefits.

(a) A married retiree who retired before May 7, 1985, and is not currently receiving a fully or partially reduced annuity to provide a current spouse annuity may elect a fully or partially reduced annuity to provide a current spouse annuity for a spouse acquired after retirement if the following conditions are met:

(1) (i) The retiree was married at the time of retirement and did not elect a survivor annuity at that time; or

(ii) The retiree failed to elect a fully or partially reduced annuity within 1 year after a post-retirement marriage that occurred before November 8, 1984, and the retiree attempted to elect a fully or partially reduced annuity after the time limit expired and that request was disallowed as untimely.

(2) The retiree applies for a fully or partially reduced annuity under this section before November 9, 1985.

(3) The retiree agrees to pay the amount due under paragraph (d) of this section.

(b) Applications must be filed on the form prescribed by OPM, except filing the form is excused when the retiree dies before filing the required form if:

(1) The retiree made a written request, after November 8, 1984, to elect

a fully or partially reduced annuity under this section, and

(2) The retiree was denied the opportunity to file the required form because the retiree, without fault, did not receive the form in sufficient time for the retiree to be reasonably expected to complete the form before death.

(c) (1) In response to a retiree's inquiry about providing a current spouse annuity under this section, OPM will send an application form. This application will include instructions to assist the retiree in estimating the amount of reduction in the annuity to provide the current spouse annuity and the amount of the required deposit. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully or partially reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity; and

(ii) The rate of the potential current spouse annuity; and

(iii) The amount of the deposit, plus interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

(3) The notice under paragraph (c)(2) of this section will advise the retiree that the deposit will be collected in installments under § 831.624, unless lump-sum payment is made within 60 days from the date of this notice.

(4) OPM will reduce the annuity and begin collection of the deposit in installments effective with the first check payable more than 60 days after the date on the notice required under paragraph (c)(2) of this section.

(d) The retiree must state on the application form whether the application is made under paragraph (a)(1)(i) of this section or paragraph (a)(1)(ii) of this section. If the application is made under paragraph (a)(1)(ii) of this section, the retiree must prove that he or she had attempted to elect a fully reduced annuity and that OPM rejected that application because it was filed too late. The proof must consist of a copy of OPM's letter rejecting the previous election as untimely filed or an affidavit swearing or affirming that he or she made an untimely application which OPM rejected. The affidavit is sufficient documentation to provide proof of the retiree's attempt to elect a reduced annuity, unless the record contains convincing evidence to rebut the certification.

(e) A retiree who elects to provide a current spouse annuity under this section must agree to pay a deposit equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if a fully reduced annuity were being paid continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

§ 831.624 Payments of required deposits.

(a) The deposits required to elect fully or partially reduced annuities under §§ 831.612, 831.613, 831,621, or 831.623 are not annuity overpayments and their collection is not subject to waiver. They are subject to reconsideration only to determine whether the amount has been correctly computed.

(b) If a retiree fails to make a deposit required under § 831.621 or § 831.623 within 60 days after the date of the notice required by § 831.621(e) or § 831.623(c), the deposit will be collected by offset from his or her annuity in installments equal to 25 percent of the retiree's net annuity (as defined in § 831.1703).

(c) If a retiree fails to make a deposit required by §§ 831.612 or 831.613 within 2 years after the date of the post-retirement marriage or divorce, the deposit will be collected by offset from his or her annuity in installments equal to 25 percent of the retiree's net annuity (as defined in § 831.1703).

(d) If a retiree dies before a deposit required under §§ 831.612, 831.613, 831.621, or 831.623 is fully made, the deposit will be collected from the survivor annuity (for which the election required the deposit) before any payments of the survivor annuity are made.

§ 831.625 Remarriage.

(a) A current spouse annuity based on the death of a retiree who retired before May 7, 1985, or of an employee or Member who died while serving in a position covered under CSRS before May 7, 1985, terminates on the last day of the month before the current spouse remarries before attaining age 60.

(b) A current spouse annuity or a former spouse annuity based on the death of a retiree who retired on or after May 7, 1985, or of an employee or Member who died while serving in a position covered under CSRS on or after May 7, 1985, terminates on the last day of the month before the recipient remarries before attaining age 55.

(c) If a current spouse annuity is terminated because of remarriage of the recipient, the annuity is reinstated on the day of the termination of the remarriage by death, annulment, or divorce if—

(1) The surviving spouse elects to receive this annuity instead of a survivor benefit to which he or she may be entitled, under CSRS or another retirement system for Government employees, by reason of the remarriage; and

(2) Any lump sum paid on termination of the annuity is repaid (in a single payment or by withholding payment of the annuity until the amount of the lump sum has accrued).

(d) If present or future entitlement to a former spouse annuity is terminated because of remarriage of the recipient or potential recipient, the entitlement is permanently extinguished. An annulment of the remarriage does not reinstate the entitlement.

§ 831.626 Elections by previously retired retiree with new title to an annuity.

(a) A reemployed retiree (after 5 or more years of reemployed annuitant service) who elects a redetermined annuity under section 8344 of title 5, United States Code, is subject to §§ 831.604 through 831.611 at the time of the redetermination.

(b) A disability retiree who recovers from disability or is restored to earning capacity is subject to §§ 831.604 through 611 at the time that he or she retires under section 8336 or 8338 of title 5, United States Code.

(c) A retiree who is dropped from the retirement rolls and subseqently gains a new annuity right by fulfilling the requirements of section 8333(b) of title 5, United States Code, is subject to §§ 831.604 through 831.611 when he or she retires under that new annuity right.

§ 831.627 Annual notice required by Pub. L. 95-317.

At least once every 12 consecutive months, OPM will send a notice to all retirees to inform them about the survivor annuity elections available to them, under sections 8339(j) and 8339(k)(2) of title 5, United States Code, in the event of post-retirement marriages.

Subpart G—Computation of Annuities

§ 831.701 Effective dates of annuities.

(a) Except as provided in paragraphs (b) and (c) of this section, an annuity of an employee or Member commences on the first day of the month after—

(1) Separation from the service; or

(2) Pay ceases and the service and age requirements for title to annuity are met, if earlier than the date of separation.

(b) An annuity of—

(1) An employee involuntarily separated from service (except by removal for cause on charges of misconduct or delinquency) and eligible for an immediate annuity based on that involuntary separation;

(2) An employee or Member retiring due to a disability; and

(3) An employee or Member retiring after serving three days or less in the month of retirement—shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(c) An annuity granted under section 8338, title 5, United States Code, commences on the appropriate birthday of the employee or Member.

(d) Survivor annuities commence as provided in § 831.1002.

(e) Except as provided in §831.502, annuity terminates on the date of death or on the date of any other terminating event in each case when OPM terminates the annuity.

(f) Annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. Annuity does not accrue for the thirty-first day of any month, except in the initial month if the employee's annuity commences on the 31st of a 31-day month. For accrual purposes, the last day of a 28-day month constitutes 3 days and the last day of a 29-day month constitutes 2 days.

[48 FR 38786, Aug. 26, 1983]

§ 831.702 Adjustment of annuities.

(a)(1) An annuity which includes creditable National Guard technician service performed prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which an annuitant is entitled (or on proper application would be entitled) for any month in which the annuitant is eligible for State benefits based on the same pre-1969, service.

(2) Any cost-of-living increases in the State benefit shall require a corresponding deduction in the civil service annuity.

(3) Any cost-of-living increase to a civil service annuity shall apply to the gross annuity before deduction for benefits under any State retirement system.

(b) In the adjudication of claims arising under subchapter III of Chapter 83 of title 5, United States Code, OPM shall take appropriate action to obtain the data that it considers necessary to assure the proper annuity deduction. Upon request by OPM, an annuitant shall promptly submit this data.

[48 FR 38786, Aug. 26, 1983]

Subpart H—Reemployment of Retired Employees

SOURCE: 42 FR 6793, Feb. 4, 1977, unless otherwise noted.

§ 831.801 Definition of annuitant.

(a) In this subpart, "annuitant" means a former employee who is receiving, or meets the legal requirements and is an applicant for an annuity under subchapter III of chapter 83 of title 5, United States Code, based on his or her service.

(b) This subpart applies to annuitants serving in an appointive or elective position on or after October 1, 1976, subject to continuation of pay and reduction of pay by the amount of annuity allocable to the period of reemployment in accord with section 8344(a) of title 5, United States Code.

§ 831.802 Supplemental annuity and redetermined annuity.

(a) An annuitant employed in an appointive or elective position that is not subject to another retirement system for Government employees (unless excepted by the first sentence of 5 U.S.C. 8344(a)) may elect to have deductions for the Fund made from his or her pay. When an annuitant elects to have deductions made, he or she may not change the election during service under that appointive or elective position. When an annuitant is employed continuously for at least one year in such appointive or elective position and actually serves for at least one year on a full-time basis, or the equivalent of one year of full-time service on a part-time basis, in a position not excluded from coverage by section 8331(1)(i) and (ii) of title 5, United States Code, the annuitant is entitled to a supplemental annuity on termination of the employment by separation for more than three calendar days or by conversion to intermittent status; however, if the annuitant performs service on or after October 1, 1982, he or she must make a deposit for all such service if no deductions are taken from his or her salary in order to obtain a supplemental annuity based on the service on or after October 1, 1982. The supplemental annuity is (1) computed under the formula provided by the law in effect at the date of termination of employment, (2) based on all periods of full-time or part-time service performed after his or her retirement (service performed on or after October 1, 1982, must be covered by retirement deductions or a deposit of the retirement deductions which should have been taken, plus interest), with such periods considered as part of his or her total service, and (3) based on the average basic pay (before annuity deduction) received during the periods of full-time or part-time service performed after his or her retirement.

(b) If the annuitant is employed continuously for at least five years in an appointive or elective position and actually serves or at least 5 years on a full-time basis, or the equivalent of 5 years of full-time service on a part-time basis, in a position not excluded from coverage by section 8331(1)(i) and (ii) of title 5, United States Code, the annuitant may make a deposit for service performed before October 1, 1982, (service performed on or after October 1, 1982, must be covered by retirement deductions or a deposit of the retirement deductions that should have been taken, plus interest) and elect instead of the supplemental annuity described herein to have his or her retirement rights redetermined under the law in effect at separation date.

(c) Except as provided in paragraph (d) of this section, the supplemental or redetermined annuity commences (1) on the first day of the month after separation from such employment, or (2) on the first day of the month after the annuitant is converted to an intermittent status and meets the service requirements.

(d) The supplemental or redetermined annuity of—

(1) a reemployed annuitant involuntarily separated from service (except by removal for cause on charges of misconduct or delinquency);

(2) A reemployed annuitant involuntarily converted to an intermittent status;

(3) A reemployed annuitant retiring due to disability; and

(4) a reemployed annuitant retiring after serving three days or less in the month of retirement—

shall commence on the day after separation from the service, the effective date of conversion to intermittent status, or the day after pay ceases and the service requirements for title to supplemental or redetermined annuity are met.

(e) Full-time service means any actual service in which the reemployed annuitant is scheduled to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours).

(f) Part-time service means any actual service performed on a less than full-time basis under a prescheduled regular tour of duty.

(g) Intermittent service means any actual service performed on a less than full-time basis with no prescheduled regular tour of duty.

[42 FR 6793, Feb. 4, 1977, as amended at 48 FR 38786, Aug. 26, 1983]

§ 831.803 Annuity entitlement following termination of annuity upon reemployment.

When an individual's annuity is terminated upon reemployment subject to subchapter III of chapter 83, title 5, United States Code, in accord with the provisions of section 8344(a), (b) and (c) of title 5, United States Code, OPM shall determine the individual's future annuity rights under the law in effect at the date of his or her subsequent separation. If upon separation from such reemployment the individual does not meet the eligibility requirements under subchapter III of chapter 83, title 5, United States Code, for title to annuity based on such separation, OPM shall resume payment of the terminated annuity. Annuity increases authorized under section 8340 of title 5, United States Code, between the termination and resumption of annuity, will be applied to increase the resumed rate.

[42 FR 6793, Feb. 4, 1977; 48 FR 38787, Aug. 26, 1983]

Subpart I—Law Enforcement Officers and Firefighters

SOURCE: 39 FR 40936, Nov. 22, 1974, unless otherwise noted.

§ 831.901 Special provisions applicable.

"Law enforcement officer" and "firefighter," as defined in section 8331(20)-(21) of title 5, United States Code, are subject to the following special provisions of subchapter III of chapter 83 of title 5, United States Code:

(a) Section 8331(3)(C) and (D), pertaining to basic pay;

(b) Section 8334(a)(1) and (c), pertaining to deductions, contributions, and deposits;

(c) Section 8335(b), pertaining to mandatory separation;

(d) Section 8336(c)(1) pertaining to immediate retirement; and

(e) Section 8339(d), pertaining to computation of annuity.

[39 FR 40936, Nov. 22, 1974, as amended at 48 FR 38787, Aug. 26, 1983]

§ 831.902 Determination of applicability.

Subject to §§ 831.903-831.904, and after concurrence of OPM with respect to positions not approved by OPM prior to the effective date of Pub. L. 93-350 (July 12, 1974), the appropriate administrative authority of an agency shall determine the applicability of the definitions in section 8331(20)-(21) of title 5, United States Code, and of the special provisions mentioned in § 831.901 to employees in positions, including supervisory or administrative positions, in that agency.

§ 831.903 Law enforcement officer.

(a) "Law enforcement officer" includes an employee whose primary duties, as set forth in the official position description, require the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States. Law enforcement officer does not include an employee in a position the primary and regular duties of which involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected of violating the criminal laws of the United States, or whose duties only occasionally or incidentally require the investigation, apprehension, or detention of persons suspected or convicted of violating the criminal laws of the United States.

(b) If OPM concurs with the appropriate administrative authority of an agency that the detention duties of a position in a penal or related institution as defined in section 8331(20)(A)-(D) of title 5, United States Code, require frequent direct contact with prisoners, an employee in such position shall be included within the meaning of the term "law enforcement officer". Concurrence of OPM obtained prior to July 12, 1974, remains in effect.

(c) "Law enforcement officer" also includes an employee who is transferred to a position the primary duties of which are not the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States, or from such a position to another such position, if—

(1) Service in the position transferred to follows service in a law enforcement position without—

(i) A break in service of more than three days; or

(ii) Intervening employment that was not as a law enforcement officer;

(2) The duties of the position transferred to are in the law enforcement line of work in an organization with responsibility for the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States; and

(3) The position transferred to is—

(i) Supervisory—one which requires a duty of supervising subordinate employees who are directly engaged in the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States; or

(ii) Administrative—one which includes an executive or managerial position and may include a clerical, technical, semiprofessional, or professional position of a type also found in organizations with no law enforcement responsibilities: *Provided,* That experience as a law enforcement officer is a basic qualification for the administrative position.

(d) A law enforcement officer, as defined in section 8331(20) of title 5, United States Code, who has transferred to a position identified by paragraph (c) of this section, under the conditions described in this paragraph, shall be deemed to have met the transfer requirements for all subsequent employment in supervisory/administrative law enforcement positions, except for any period of reemployment as an annuitant under title 5, United States Code, section 8335(b) or section 8336(c). This applies only to law enforcement officers who are employed on or after December 31, 1979.

(5 U.S.C. 8336)

[39 FR 40936, Nov. 22, 1974, as amended at 45 FR 996, Jan. 4, 1980; 48 FR 38787, Aug. 26, 1983]

§ 831.904 Firefighter.

(a) "Firefighter" includes an employee whose primary duties, as set forth in the official position description, require the performance of work directly connected with the control and extinguishment of fires, or the maintenance and use of firefighting apparatus and equipment.

(b) "Firefighter" also includes an employee who is transferred to a position the primary duties of which are not the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, or from such a position to another such position, if—

(1) Service in the position transferred to follows service in a firefighter position without—

(i) A break in service of more than three days; or

(ii) Intervening employment that was not as a firefighter;

(2) The duties of the position transferred to are in the firefighting line of work in an organization with firefighting responsibilities; and

(3) The position transferred to is—

(i) Supervisory—one which requires a duty of supervising subordinate employees who are directly engaged in firefighting and/or in the maintenance and use of firefighting apparatus and equipment; or

(ii) Administrative—one which includes an executive or managerial position and may include a clerical, technical, semiprofessional, or professional position of a type also found in organizations with no firefighting responsibilities: *Provided*, That experience as a firefighter is a basic qualification for the administrative position.

(c) A firefighter, as defined in section 8331(21), of title 5, United States Code, who has transferred to a position identified by paragraph (b) of this section, under the conditions described in this paragraph, shall be deemed to have met the transfer requirements for all subsequent employment in supervisory and/or administrative firefighter positions, except for any period of reemployment as an annuitant under title 5, United States Code, section 8335(b) or section 8336(c). This applies only to firefighters who are employed on or after December 31, 1979.

(5 U.S.C. 8336)

[39 FR 40936, Nov. 22, 1974, as amended at 45 FR 996, Jan. 4, 1980; 48 FR 38787, Aug. 26, 1983]

§ 831.905 Creditability-of-service determinations.

(a) OPM shall determine whether service prior to July 12, 1974, was as a law enforcement officer or firefighter.

(b) Service on and after July 12, 1974, shall be deemed to have been performed as a law enforcement officer or firefighter if—

(1)(i) The position in which the service was performed was approved by OPM under paragraph (a) of this section as being subject to section 8336(c)(1) of title 5, United States Code; or

(ii) The appropriate administrative authority of the employee's agency determined, with the concurrence of OPM, that the definitions in section 8331(20)–(21) of title 5, United States Code, applied to the employee; and

(2) Retirement deductions and contributions were made at the rate specified in section 8334(a)(1) of title 5, United States Code.

(c) In the event an employee is separated mandatorily under section 8335(b) of title 5, United States Code, or is separated for optional retirement under section 8336(c)(1) of title 5, United States Code, and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position in which the employee was not a law enforcement officer or firefighter, such separation shall be considered erroneous. For service held by OPM to have been in a position in which the employee was not a law enforcement officer of firefighter, the employee may, upon proper application, be paid a refund, without interest, of—

(1) The excess of his retirement withholdings during such service at the rate specified in section 8334(a)(1) of title 5, United States Code, for law enforcement officers and firefighters over the rate specified for employees generally; and

(2) Withholdings during such service attributable to premium pay.

[39 FR 40936, Nov. 22, 1974, as amended at 48 FR 38787, Aug. 26, 1983]

§ 831.906 Reemployment of law enforcement and firefighter personnel.

An employee required to retire by 5 U.S.C. 8335(b) may be reemployed until age 60. The prohibition against the reemployment of firefighters and law enforcement personnel after age 60 applies only to those positions involved with the performance of actual firefighting or law enforcement duties as described in §§ 831.903(a) and 831.904(a).

[48 FR 38787, Aug. 26, 1983]

Subpart J—[Reserved]

Subpart K—Prohibition on Payments of Annuities

§ 831.1101 Scope.

This subpart prescribes the procedures to be followed in determining whether payment of an annuity under subchapter III of chapter 83 of title 5, United States Code, is prohibited by subchapter II of that chapter.

§ 831.1102 Definitions.

As used in this subpart, "annuitant" means an individual who, on the basis of his service, or as a survivor annuitant, has met all the requirements of subchapter III of chapter 83 of title 5, United States Code, for title to an annuity and has filed claim therefor.

§ 831.1104 Notice.

When the Associate Director determines that subchapter II of chapter 83 of title 5, United States Code, appears to prohibit payment of annuity, he shall notify the annuitant in writing of his intention to withhold payment of the annuity. The notice shall set forth the reasons for this determination. The notice may be served by registered or certified mail and shall inform the annuitant that he is entitled to submit an answer and request a hearing.

[34 FR 17618, Oct. 31, 1969]

§ 831.1105 Answer; request for hearing.

(a) The annuitant has 30 calendar days from the day he receives the notice within which to submit an answer and to request a hearing. The Associate Director may extend this time limit for good cause shown. If the annuitant answers, he shall specifically admit, deny, or explain each fact alleged in the notice, unless he states that he is without knowledge. If a hearing is desired, the annuitant must file a specific request therefor with or as a part of his answer.

(b) An annuitant who fails to answer or to request a hearing within the time permitted under paragraph (a) of this section is considered to have waived his right to answer or to a hearing. If an annuitant neither answers nor requests a hearing within the time permitted, or answers but fails to request a hearing, the Associate Director shall decide the case on the basis of the administrative record, including the notice and any documents, affidavits, or other relevant evidence. The decision of the Associate Director shall (1) be served on the annuitant or his counsel by certified or registered mail; (2) include a statement of findings and conclusions with the reasons therefor; and (3) become the final decision of OPM unless the case is appealed or reviewed pursuant to § 831.1111.

[34 FR 17618, Oct. 31, 1969]

§ 831.1106 Hearing.

(a) OPM's hearing examiner shall preside at any hearing held pursuant to this subpart, unless OPM designates another presiding officer. The presiding officer shall fix the time and place of the hearing after giving due consideration to the convenience of the annuitant. The hearing is open to the public unless otherwise ordered by OPM or the presiding officer.

(b) The hearing shall be recorded by an official reporter designated by OPM. OPM shall furnish to the annuitant, without charge, a copy of the transcript of the hearing.

§ 831.1107 Powers of presiding officers.

The presiding officer may:

(a) Administer oaths and affirmations;

(b) Rule upon offers of proof and receive relevant evidence;

(c) Fix the time and place of hearing;

(d) Regulate the course of the hearing;

(e) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing;

(f) Hold conferences for simplification of the issues, or for any other purpose;

(g) Dispose of procedural requests or similar matters;

(h) Authorize the filing of briefs and set the time for filing;

(i) Make initial decisions; and

(j) Take any other action in the course of the proceeding consistent with the purposes of this subpart.

§ 831.1108 Witnesses.

(a) Witnesses shall testify under oath or affirmation and shall be subject to cross-examination.

(b) Each party is responsible for securing the attendance of his witnesses. OPM has no power of subpena in these cases.

§ 831.1109 Evidence.

(a) Rules of evidence are not strictly applied, but the presiding officer shall exclude irrelevant or unduly repetitious evidence.

(b) Each exhibit of a documentary character shall be submitted to the presiding officer, duly marked, and made a part of the record. An exhibit does not become evidence unless received in evidence by the presiding officer.

§ 831.1110 Initial decision.

(a) Upon completion of a hearing pursuant to § 831.1106, the presiding officer shall make and file an initial decision, a copy of which shall be served on each party or counsel by certified or registered mail.

(b) The initial decision shall include a statement of findings and conclusions, with the reasons therefor, and shall be based upon a consideration of the entire record.

(c) The initial decision shall become the final decision of OPM unless the case is appealed or reviewed pursuant to § 831.1111.

§ 831.1111 Appeal and review.

(a) An appeal from an initial decision, or a decision of the Associate Director under § 831.1105(b), may be made to OPM, with service on the other party, within 30 calendar days from the date of the decision. An appeal shall be in writing and shall state plainly and concisely the grounds for the appeal, with a specific reference to the record when issues of fact are raised. The other party may file an opposition to the appeal within 15 days after service on him. On notice to the parties, OPM may extend the time limits prescribed in this paragraph.

(b) Within 30 calendar days from the date of an initial decision or a decision of the Associate Director, OPM, on its own motion, may direct that the record be certified to it for review.

[34 FR 17618, Oct. 31, 1969]

§ 831.1112 Final decision.

(a) On appeal from or review of an initial decision or a decision of the Associate Director, OPM shall decide the case on the record. The record shall include the notice, answer, transcript of testimony and exhibits, briefs, the initial decision or the decision of the Associate Director, the papers filed in connection with the appeal and opposition to the appeal and all other papers, requests and exceptions filed in the proceeding.

(b) OPM may adopt, modify, or set aside the findings, conclusions, or order of the presiding officer or the Associate Director.

(c) The final decision of OPM shall be in writing and include a statement of findings and conclusions, the reasons or basis therefor, and an appropriate order, and shall be served on the parties.

[33 FR 12498, Sept. 4, 1968, as amended at 34 FR 17618, Oct. 31, 1969]

Subpart L—Disability Retirement on Application by an Agency

Source: 49 FR 1331, Jan. 11, 1984, unless otherwise noted.

§ 831.1201 Scope.

This subpart prescribes the procedures to be followed when an agency files an application for the employee's disability retirement in the course of removing an employee.

§ 831.1202 Definitions.

"Medical documentation," "documentation of a medical condition," and "review of medical documentation," have the same meaning given these terms in § 339.102 of this chapter. "Medical documentation" submitted under this subpart shall be submitted from a physician.

§ 831.1203 Basis for filing application.

(a) An agency shall file an application for disability retirement of an employee who has five years of civilian Federal service under the following conditions:

(1) The agency has issued a decision to remove the employee;

(2) The agency concludes, after its review of medical documentation, that cause for the unacceptable performance, conduct, or attendance is due to disease or injury;

(3) The employee is institutionalized, or based on the agency's review of medical and other information, it concludes that the employee is incapable of making a decision to file an application for disability retirement;

(4) The employee has no personal representative or guardian; and

(5) The employee has no immediate family member who is willing to file an application on his or her behalf.

(b) When an agency issues a decision to remove and the conditions described in paragraph (a) of this section have not been satisfied but the removal is based on reasons apparently caused by a medical condition, the agency shall advise the employee in writing of his or her possible eligibility for disability retirement.

§ 831.1204 Agency procedure.

(a) The agency shall inform the employee in writing at the same time it informs the employee of its removal decision, or any time before the separation is effected, that: (1) The agency is submitting a disability retirement application on the employee's behalf to OPM, (2) the employee may review any medical information in accordance with the criteria in § 294.401(b) of this chapter, and (3) the action does not affect the employee's right to submit a voluntary application for disability retirement under § 831.502 of this part.

(b) When an agency submits an application for disability retirement to OPM under this subpart, it shall provide OPM with copies of the decision to remove, the medical documentation, and any other documents needed to show that the cause for removal is due to a medical condition. Following separation, the agency shall provide OPM a copy of the documentation of the separation.

§ 831.1205 Office of Personnel Management procedure.

(a) OPM shall not act on any application for disability retirement under this subpart until it receives the appropriate documentation of the separation. When OPM receives a complete application for disability retirement under this subpart, it shall notify the former employee that it has received the application, and that he or she may submit medical documentation. OPM shall determine entitlement to disability retirement under the provisions of § 831.502 of this part.

(b) OPM shall issue its decision in writing to the employee and to the employing agency. The decision shall include a statement of findings and conclusions, and an explanation of the right to request reconsideration under § 831.109 of this part.

§ 831.1206 Cancellation of retirement.

OPM shall cancel any disability retirement when a final decision of an administrative authority or court reverses the removal action and orders the reinstatement of an employee to the agency rolls.

Subpart M—Collection of Debts

SOURCE: 50 FR 34664, Aug. 27, 1985, unless otherwise noted.

§ 831.1301 Purpose.

This subpart prescribes procedures to be followed by the Office of Personnel Management (OPM), which are consistent with the Federal Claims Collection Standards (FCCS) (Chapter II of Title 4, Code of Federal Regulations), in the collection of debts owed to the Civil Service Retirement and Disability Fund.

§ 831.1302 Scope.

This subpart covers the collection of debts due the Civil Service Retirement and Disability Fund, with the exception of the collection of court-imposed judgments, amounts referred to the Department of Justice because of fraud, and amounts collected from back pay awards in accordance with § 550.805(e)(2) of this chapter.

§ 831.1303 Definitions.

In this subpart—

"Additional charges" means interest, penalties, and/or administrative costs owed on a debt.

"Annuitant" means a retired employee or Member of Congress, spouse, widower, or child receiving recurring benefits under the provisions of subchapter III, chapter 83, of title 5, United States Code.

"Compromise" is an adjustment of the total amount of the debt to be collected based upon the considerations established by the FCCS (4 CFR Part 103).

"Consumer reporting agency" has the same meaning provided in 31 U.S.C. 3701(a)(3).

"Debt" means a payment of benefits to an individual in the absence of entitlement or in excess of the amount to which an individual is properly entitled.

"Delinquent" has the same meaning provided in 4 CFR 101.2(b).

"FCCS" means the Federal Claims Collection Standards (Chapter II of Title 4, Code of Federal Regulations).

"Offset" means to withhold the amount of a debt, or a portion of that amount, from one or more payments due the debtor. Offset also means the amount withheld in this manner.

"Reconsideration" means the process of reexamining an individual's liability for a debt based on—

(1) Proper application of law and regulation; and

(2) Correctness of the mathematical computation.

"Repayment schedule" means the amount of each payment and number of payments to be made to liquidate the debt as determined by OPM.

"Retirement fund" means the Civil Service Retirement and Disability Fund.

"Voluntary repayment agreement" means an alternative to offset that is agreed to by OPM and includes a repayment schedule.

"Waiver" is a decision not to recover a debt under authority of 5 U.S.C. 8346(b).

§ 831.1304 Processing.

(a) *Notice.* Except as provided in § 831.1305, OPM will, before starting collection, tell the debtor in writing—

(1) The reason for and the amount of the debt;

(2) The date on which the full payment is due;

(3) OPM's policy on interest, penalties, and administrative charges;

(4) If payment in full would create financial hardship to the debtor and offset is available, the types of payment(s) to be offset, the repayment schedule, the right to request an adjustment in the repayment schedule and the right to request a voluntary repayment agreement in lieu of offset;

(5) The individual's right to inspect and/or receive a copy of the Government's records relating to the debt;

(6) The method and time period (30 calendar days) for requesting reconsideration, waiver, and/or compromise and, in the case of offset, an adjustment to the repayment schedule;

(7) The standards, used by OPM for determining entitlement to waiver and compromise;

(8) The right to a hearing by the Merit Systems Protection Board on a waiver request (if OPM's waiver decision finds the individual liable) in accordance with paragraph (c)(2) of this section; and

(9) The fact that a timely filing of a request for reconsideration, waiver and/or compromise, or a later timely appeal of a waiver denial to the Merit Systems Protection Board, will stop collection proceedings, unless (i) failure to take the offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of these procedures.

(b) *Requests for reconsideration, waiver, and/or compromise.* (1) If a request for reconsideration, waiver and/or compromise is returned to us by mail, it must be postmarked within 30 calendar days of the date of the notice detailed in paragraph (a) of this section. If a request for reconsideration, waiver, and/or compromise is hand delivered, it must be received within 30 calendar days of the date of the notice detailed in paragraph (a) of this section. OPM may extend the 30 day time limit for filing when individuals can prove that they: (i) Were not notified of the time limit and were not otherwise aware of it; or (ii) were prevented by circumstances beyond their control from making the request within the time limit.

(2) When a request for reconsideration, waiver, and/or compromise covered by this paragarph is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(3) Individuals requesting reconsideration, waiver, and/or compromise will be given a full opportunity to present any pertinent information and documentation supporting their position.

(4) An individual's request for waiver will be evaluated on the basis of the standards set forth in Subpart N of this part. An individual's request for compromise will be evaluated on the basis of standards set forth in the FCCS (4 CFR Part 103).

(c) *Reconsideration, waiver, and/or compromise decisions.* (1) OPM's decision will be based upon the individual's written submissions, evidence of record, and other pertinent available information.

(2) After consideration of all pertinent information, a written decision will be issued. The decision will state the extent of the individual's liability, and, for waiver and compromise requests, whether the debt will be waived or compromised. If the individual is determined to be liable for all or a portion of the debt, the decision will reaffirm or modify the conditions for the collection previously proposed under paragraph (a) of this section. The decision will state the individual's right to appeal to the Merit Systems Protection Board as provided by § 1201.3 of this title, and, in the case of a denial of waiver, that a timely appeal will stop collection of the debt.

§ 831.1305 Collection of debts.

(a) *Means of collection.* Collection of a debt may be made by means of offset under § 831.1306, or under any statutory provision providing for offset of money due the debtor from the Federal Government, or by referral to the Justice Department for litigation, as provided in § 831.1306. Referral may also be made to a collection agency under the provisions of the FCCS.

(b) *Additional charges.* Interest, penalties, and administrative costs will be assessed on the debt in accordance with standards established in the FCCS at 4 CFR 102.13. Additional charges will be waived when required by the FCCS. In addition, such charges may be waived when OPM determines—

(1) Collection would be against equity and good conscience under the

standards prescribed in §§ 831.1403 through 831.1405 of this part; or

(2) Waiver would be in the best interest of the United States.

(c) *Collection in installments.* Whenever feasible, debts will be collected in one lump sum. However, when the debtor is financially unable to pay in one lump sum of fails to respond to a demand for full payment and off-set is available, installment payments may be effected. The amount of the installment payments will be set in accordance with the criteria in 4 CFR 102.11.

(d) *Commencement of collection.* (1) Except as provided in paragraph (d)(2) of this section, collection will begin after the time limits for requesting further rights stated in § 831.1304(a)(6) expire or OPM has issued decisions on all timely requests for those rights and the Merit Systems Protection Board has acted on any timely appeal of a waiver denial, unless: (i) Failure to make an offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 831.1304 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly, and amounts recovered by offset but later found not owed will be refunded promptly.

(2) The procedures identified in § 831.1304 will not be applied when the debt is caused by (i) a retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or (ii) interim, estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the last advance payment or the date the formal determination is made, whichever is later.

§ 831.1306 Collection by administrative offset.

(a) *Offset from retirement payments.* A debt may be collected in whole or in part from lump-sum retirement payment or recurring annuity payments.

(b) *Offset from other payments*—(1) *Administrative offset.* (i) A debt may be offset from other payments due the debtor from other agencies in accordance with 4 CFR 102.3, except that offset from back pay awarded under the provisions of 5 U.S.C. 5596 (and 5 CFR 550.801 *et seq.*) will be made in accordance with § 550.805(e)(2) of this chapter.

(ii) In determining whether to collect claims by means of administrative offset after the expiration of the six year limitation provided in 5 U.S.C. 2415, the Director or his designee will determine the cost effectiveness of leaving a claim unresolved for more than 6 years. This decision will be based on such factors as the amount of the debt; the cost of collection; and the likelihood of recovering the debt.

(2) *Salary offset.* When the debtor is an employee, or a member of the Armed Forces or a reserve component of the Armed Forces, OPM may effect collection action by offset of the debtor's pay in accordance with 5 U.S.C. 5514 and 5 CFR 550.1101 *et seq.* Due process described in § 831.1304 will apply. The questions of fact and liability, and entitlements to waiver or compromise determined through that process are deemed correct and will not be amended under salary offset procedures. When the debtor did not receive a hearing on the amount of the offset under § 831.1304 and requests such hearing, one will be conducted in accordance with Subpart K of Part 550 of this chapter.

§ 831.1307 Use of consumer reporting agencies.

(a) *Notice.* If a debtor's response to the notice described in § 831.1304(a) does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to OPM, and the debtor's rights under § 831.1304 have been exhausted, OPM may report the debtor to a consumer reporting agency. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule may result in a report to a consumer reporting agency. Before making a report to a consumer reporting agency, OPM will notify the debtor in writing that—

(1) The payment is overdue;

(2) OPM intends, after 60 days, to make a report as described in paragraph (b) of this section to a consumer reporting agency;

(3) The debtor's right to dispute the liability has been exhausted under § 831.1304; and

(4) The debtor may suspend OPM action on referral by paying the debt in one lump sum or making payments current under a repayment schedule.

(b) *Report.* When a debtor's response to the notice described in paragraph (a) of this section fails to comply with paragraph (a)(4) of this section and 60 days have elapsed since the notice was mailed, OPM may report to a consumer reporting agency that an individual is responsible for an unpaid debt and provide the following information:

(1) The individual's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the debt; and

(3) The fact that the debt arose in connection with the administration of the Civil Service Retirement System.

(c) *Subsequent reports.* OPM will update its report to the consumer reporting agency whenever it has knowledge of events that substantially change the status or the amount of the liability.

§ 831.1308 Referral to a collection agency.

(a) OPM may refer certain debts to commercial collection agencies under the following conditions:

(1) All processing required by § 831.1304 has been completed before the debt is released.

(2) A contract for collection services has been negotiated.

(3) OPM retains the responsibility for resolving disputes, compromising claims, referring the debt for litigation, or suspending or terminating collection action.

§ 831.1309 Referral for litigation.

From time to time and in a manner consistent with the General Accounting Office's and the Justice Department's instructions, OPM will refer certain overpayments to the Justice Department for litigation. Referral for litigation will suspend processing under this subpart.

Subpart N—Standards for Waiver of Overpayments

SOURCE: 45 FR 23635, Apr. 8, 1980, unless otherwise noted.

§ 831.1401 Conditions for waiver.

Recovery of an overpayment from the Civil Service Retirement and Disability Fund may be waived pursuant to section 8346(b), of title 5, United States Code, when the annuitant (a) is without fault and (b) recovery would be against equity and good conscience. Where it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if he/she shows that it would cause him/her financial hardship to make payment at the rate scheduled.

§ 831.1402 Fault.

A recipient of an overpayment is without fault if he/she performed no act of commission or omission which resulted in the overpayment. The fact that the Office of Personnel Management may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statement, which he/she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his/her possession which he/she should have known to be material; or

(3) Whether he/she accepted a payment which he/she knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him/her by OPM or a Federal agency may mitigate against finding fault if one or more contributed to his/her submission of an incorrect statement, a statement which did not disclose material facts in his/her possession, or his/her acceptance of an erroneous overpayment.

§ 831.1403 Equity and good conscience.

(a) *Defined.* Recovery is against equity and good conscience when—

(1) It would cause financial hardship to the person from whom it is sought;

(2) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either he/she has relinquished a valuable right or changed positions for the worse; or

(3) Recovery could be unconscionable under the circumstances.

§ 831.1404 Financial hardship.

Financial hardship may be deemed to exist in—but not limited to—those situations where the annuitant from whom collection is sought needs substantially all of his/her current income and liquid assets to meet current ordinary and necessary living expenses and liabilities.

(a) *Considerations.* Some pertinent considerations in determining whether recovery would cause financial hardship are as follows:

(1) The individual's financial ability to pay *at the time collection is scheduled to be made.*

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the annuitant.

(b) *Exemptions.* Assets exempt from execution under State law should not be considered in determining an individual's ability to repay the indebtedness, rather primary emphasis shall be placed upon the annuitant's liquid assets and current income in making such determinations.

§ 831.1405 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, food, clothing, insurance (life, health and accident), taxes, installment payments, medical expenses, support expenses when the annuitant is legally responsible, and other miscellaneous expenses which the individual can establish as being ordinary and necessary.

§ 831.1406 Waiver precluded.

(a) *When not granted.* Waiver of an overpayment cannot be granted when—

(1) The overpayment was obtained by fraud; or

(2) The overpayment was made to an estate.

§ 831.1407 Burdens of proof.

(a) *Burden of OPM.* The Associate Director for Compensation must establish by the preponderance of the evidence that an overpayment occurred.

(b) *Burden of annuitant.* The recipient of an overpayment must establish by substantial evidence that he/she is eligible for waiver or an adjustment.

Subpart O—Allotments From Civil Service Annuities

SOURCE: 42 FR 52373, Sept. 30, 1977; 42 FR 61240, Dec. 2, 1977, unless otherwise noted.

§ 831.1501 Definitions.

(a) "Allotment" means a specified deduction from the annuity payments due an annuitant voluntarily authorized by the annuitant to be paid to an allottee.

(b) "Allottee" means the institution or organization to which the allotment is paid.

(c) "Allotter" means the annuitant from whose annuity payments an allotment is deducted.

(d) "Annuity Payments" means the net monthly annuity payment due an annuitant after all authorized deductions (such as those for health benefits, Federal income tax, overpayment of annuity, payment of a government claim, etc. have been made.

§ 831.1511 Authorized allottees.

(a) An annuitant may make an allotment to the national office or headquarters of any of the following organizations:

(1) A labor organization recognized under Executive Order 11491, as amended;

(2) An employee organization recognized under 5 U.S.C. 8901(8);

(3) Other lawful organizations which:

(i) Are national in scope,

(ii) Are nonprofit and noncommercial, existing primarily for the purpose of representing employee or annuitant interests in their dealings with employing agencies or OPM,

(iii) Consist primarily of Federal employees and/or annuitants, and

(iv) Existed as of December 23, 1975.

(b) OPM, in its sole discretion, may approve the individual organizations which may receive allotments only after the organization has collected, in accordance with procedures prescribed by OPM, a minimum of two thousand (2,000) allotment authorizations from civil service annuitants.

(c) OPM shall permit an annuitant to make an allotment to an organization only when:

(1) The organization has been approved as an allottee by OPM, and

(2) The organization has agreed in writing to solicit and process allotments in accordance with requirements prescribed by OPM.

§ 831.1521 Limitations.

(a) The amount of any allotment may not be less than one dollar ($1) and, in the absence of compelling circumstances, shall be in whole dollars.

(b) The total amount of any allotment(s) may not exceed the net monthly annuity due the allotter.

(c) An annuitant may make only one allotment payable to the same allottee at the same time and may make no more than a total of two allotments.

(d) Payment of an allotment shall be discontinued when the allotter's annuity payments are terminated or suspended by OPM.

(e) Allotments shall be disbursed on one of the regularly designated paydays of the allotter in accordance with OPM's agreement with the allottee.

(f) Allotters shall agree that OPM shall be held harmless for any authorized allotment request made by an allottee in accordance with the allottee's agreement with OPM.

(g) Allotters shall agree that disputes regarding any authorized allotment shall be a matter between the allotter and the allottee.

(h) The total number of allottees shall be limited to twenty (20), with first preference given to those organizations participating in the Federal Employees Health Benefits Program. Thereafter, preference shall be based on the date of application and the number of annuitants who have completed allotment authorizations.

(i) OPM, in its discretion, shall recover from the allottee, the incremental costs of making allotments.

(j) OPM, in its sole discretion, may terminate an allottee's participation in the allotment program described by this subpart at any time in accordance with its agreement with the allottee.

Subpart P—[Reserved]

Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

SOURCE: 50 FR 20077, May 13, 1985, unless otherwise noted.

§ 831.1701 Purpose.

This subpart regulates the Office of Personnel Management's adjudication of claims arising out of State court orders that affect civil service retirement benefits. The Office of Personnel Management (OPM) must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriage, or legal separations of employees, Members, or retirees that award a portion of a former employee's or Member's retirement benefits or a survivor annuity to a former spouse. This subpart prescribes the procedures to be followed by—

(a) A former spouse when applying for benefits based on a court order under sections 8345(j) or 8341(h) of title 5, United States Code; and

(b) The Associate Director in honoring court orders and in making payment to the former spouse.

§ 831.1702 Relation to other regulations.

(a) Part 581 of this Chapter contains information about garnishment of Government payments including salaries and civil service retirement benefits.

(b) Parts 294 and 297 of this chapter and § 831.106 contain information about disclosure of information from OPM records.

(c) Subpart F of this part contains information about entitlement to survivor annuities.

(d) Subpart T of this part contains information about entitlement to lump-sum death benefits.

(e) Parts 870, 871, 872, and 873 of this chapter contain information about coverage under the Federal Employees' Group Life Insurance Program.

(f) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(g) Section 831.109 contains information about the administrative review rights available to a person who has been adversely affected by an OPM action under this subpart.

§ 831.1703 Definitions.

In this subpart:

"Associate Director" means the Associate Director for Compensation in the OPM or an OPM employee officially authorized to act on his or her behalf.

"Court order" means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

"CSRS" means subchapter III of chapter 83 of title 5, United States Code.

"Employee retirement benefits" means employees' and Members' annuities and refunds of retirement contributions but does not include survivor annuities or lump-sum payments made pursuant to section 8342 (c) through (f) of title 5, United States Code.

"Former spouse" means (1) in connection with a court order affecting employee retirement benefits, a living person whose marriage to an employee, Member, or retiree has been subject to a divorce, annulment, or legal separation resulting in a court order; or (2) in connection with a court order awarding a former spouse annuity, a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree.

"Former spouse annuity" means a former spouse annuity as defined in § 831.603.

"Gross annuity" means the amount of a self-only annuity less only applicable survivor reduction, but before any other deduction.

"Member" means a Member of Congress.

"Net annuity" means the amount of annuity payable after deducting from the gross annuity any amounts that are (1) owed by the retiree to the United States, (2) deducted for health benefits premiums pursuant to section 8906 of title 5, United States Code, and §§ 891.401 and 891.402 of this title, (3) deducted for life insurance premiums pursuant to section 8714a(d) of title 5, United States Code, (4) deducted for Medicare premiums, or (5) properly withheld for Federal income tax purposes, if amounts withheld are not greater than they would be if the individual claimed all dependents to which he or she was entitled.

"Qualifying court order" means a court order that meets the requirements of § 831.1704.

"Retiree" means a former employee or Member who is receiving recurring payments under CSRS based on service by the employee or Member. "Retiree," as used in the subpart, does not include a current spouse, former spouse, child or person with an insurable interest.

"Self-only annuity" means the recurring payment to a retiree who has elected not to provide a survivor annuity to anyone.

§ 831.1704 Qualifying court orders.

(a) A former spouse is entitled to a portion of an employee's retirement benefits only to the extent that the divison of retirement benefits is expressly provided for by the court order. The court order must divide employee retirement benefits, award a payment from employee retirement benefits, or award a former spouse annuity.

(b) The court order must state the former spouse's share as a fixed amount, a percentage or a fraction of the annuity, or by a formula that does not contain any variables whose value is not readily ascertainable from the face of the order or normal OPM files.

(c)(1) For purposes of payments from employee retirement benefits, OPM will review court orders as a whole to determine whether the language of the order shows an intent by the court that the former spouse should receive a portion of the employee's retirement benefits directly from the United States.

(i) Orders that direct or imply that OPM is to make payment of a portion of employee retirement benefits, or are neutral about the source of payment, will be honored unless the retiree can demonstrate that the order is invalid in accordance with § 831.1709.

(ii) Orders that specifically direct the retiree to pay a portion of employee retirement benefits to a former spouse (and do not contain language to show the court intends payment from the Civil Service Retirement System) will be honored unless the retiree objects to direct payment by OPM within the 30-day notice period prescribed in § 831.1708, but will not be honored even if the retiree raises only a general objection to payment by OPM within that 30-day notice period.

(2) For purposes of awarding a former spouse annuity, the court order must either state the former spouse's entitlement to a survivor annuity or direct an employee, Member, or retiree to provide a former spouse annuity.

(d) For purposes of affecting or awarding a former spouse annuity, a court order is not a qualifying court order whenever—

(1) The marriage was terminated before May 7, 1985; or

(2) The employee or Member on whose service the former spouse annuity is based retired under CSRS before May 7, 1985.

(e) Except in cases when divorces occur after retirement, a court order concerning a survivor annuity will not be honored if it is issued after the retirement of the employee or Member involved.

§ 831.1705 Applications by former spouse.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for benefits under this subpart. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order granting benefits under CSRS; and

(2) A statement that the court order has not been amended, superseded, or set aside; and

(3) Identifying information concerning the employee, Member, or retiree such as his or her full name, claim number, date of birth, and social security number, if available; and

(4) The mailing address of the former spouse.

(c) When payments are subject to termination upon remarriage, no payment shall be made until the former spouse submits to the Associate Director a statement on the form prescribed by OPM certifying—

(1) That a remarriage has not occurred; and

(2) That the former spouse will notify the Associate Director within 15 calendar days of the occurrence of any remarriage; and

(3) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage. The Associate Director may subsequently require recertification of these statements.

§ 831.1706 Amounts payable.

(a) Money held by an executive agency or OPM that may be payable at some future date is not available for payment under court orders unless all of the conditions necessary for payment of the money to the former employee or Member have been met, including, but not limited to—

(1) Separation from a covered position in the Federal service; and

(2) Application for payment of the money by the former employee or Member.

(b) Waivers of employee or Member annuity payments under the terms of Section 8345(d) of title 5, United States Code, exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked before the expiration of the 30-day notice period provided by § 831.1708.

(c) Payment under a court order may not exceed—

(1) In cases involving employee or Member annuities, the net annuity.

(2) In cases involving lump-sum payments (refunds), the amount of the lump-sum credit.

(3) In cases involving former spouse annuities, the amount provided in § 831.614.

(d) In cases in which court orders award former spouse annuities—

(1) Except as provided in paragraph (d)(2) of this section, former spouse annuities based on qualifying court orders will commence and terminate in accordance with the court order.

(2) A court order will not be honored to the extent it would require an annuity to commence prior to the day after the employee, Member, or retiree dies, or the first day of the second month beginning after the date on which OPM receives written notice of the court order together with the additional information required by § 831.1705. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8341(h)(3)(B) of title 5, United States Code.

(3) A court order will not be honored to the extent is is inconsistent with any joint designation or waiver previously executed under § 831.607 with respect to the former spouse involved.

§ 831.1707 Preliminary review.

(a)(1) Upon receipt of a court order and documentation required by § 831.1705 affecting the future civil service retirement benefits of an employee or Member who is living and has not applied for benefits under CSRS, the Associate Director will notify the former spouse that OPM has received the court order and documentation. The court order and documentation will be filed for further review when the employee or Member dies or funds become available under § 831.1706.

(2) When OPM has received a court order and documentation required by § 831.1705 affecting an employee or Member who retires, dies, or applies for a lump-sum benefit, the Associate Director will determine whether the court order is a qualifying court order under § 831.1704.

(3) Upon receipt of a court order and necessary documentation required by § 831.1705 affecting employee retirement benefits that are available under § 831.1706 or awarding a former spouse annuity to a former spouse of an employee who retired under CSRS or died, the Associate Director will determine whether the court order is a qualifying court order under § 831.1704.

(b) Upon preliminary determination that the court order is qualifying, the Associate Director will give the notifications required by § 831.1708.

(c) Upon preliminary determination that the court order is not qualifying, the former spouse will be notified of the basis for the determination and the right to reconsideration under § 831.109.

§ 831.1708 Notifications.

(a) In a case in which the court order affects employee retirement benefits:

(1) The Associate Director will notify the employee, Member, or retiree that a court order has been received that appears to require that a portion of his or her retirement benefits be paid to a former spouse and provide the employee, Member, or retiree with a copy of the court order. The notice will inform the former employee or Member—

(i) That OPM intends to honor the court order; and

(ii) Of the effect that the court order will have on the former employee or Member's retirement benefits; and

(iii) That no payments will be made to the former spouse for a period of 30 days from the notice date to enable the former employee or Member to contest the court order.

(2) The Associate Director will notify the former spouse—

(i) That OPM intends to honor the court order; and

(ii) Of the amount that the former spouse is entitled to receive under the court order, and in cases that award a portion of the benefits on a percentage basis or by a formula, how the amount was computed; and

(iii) That payment is being delayed for a period of 30 days to give the former employee or Member an opportunity to contest the court order.

(b) In a case in which the court order awards a former spouse annuity—

(1) The Associate Director will notify the retiree, if living, or, if the employee, Member, or retiree is dead, his or her surviving spouse, or the person entitled to the lump-sum death benefit under section 8342 of title 5, United States Code, if possible, that a court order has been received that requires the payment of a former spouse annuity. The notice will include a copy of the court order. The notice will state—

(i) That OPM intends to honor the court order; and

(ii) The effect it will have on the potential retirement benefit of the person receiving the notice; and

(iii) That any objection to honoring the court order must be filed within 30 days from the notice date.

(2) The former spouse will be notified—

(i) That OPM intends to honor the court order; and

(ii) Of the amount of survivor annuity that he or she will be entitled to receive and how the amount was computed; and

(iii) That anyone adversely affected has a period of 30 days in which to contest the court order.

(c) In a case in which the court order affects employee retirement benefits and awards a former spouse annuity all of the notices under paragraphs (a) and (b) of this section will be provided.

§ 831.1709 Decisions.

(a)(1) When the individual does not respond within the 30-day notice period provided for by § 831.1708, the court order will be honored in accordance with the notification.

(2) When a timely response to the notification is received, the Associate Director will consider the response. The former spouse's claim will be denied and the former spouse will be notified of the right to request reconsideration under § 831.109 whenever is is shown that—

(i) The court order is not a qualifying court order; or

(ii) The court order is inconsistent with a contemporaneous or subsequent court order.

(b) If any person who may lose benefits if OPM honors the court order objects to payment based on the validity of the court order and the record contains reasonable support for the objection, he or she will be granted 30 days to initiate legal action to determine the validity of the objection. If funds are available under § 831.1706 and evidence is submitted that legal action had been started before the 30 days have expired, money will continue to be withheld, but no payment will be made to the former spouse pending judicial determination of the validity of the court order.

§ 831.1710 Lump-sum credits.

Payment of the lump-sum credit to a former employee or Member will be subject to court orders in accordance with § 831.2009.

§ 831.1711 Effective dates.

(a)(1) The provisions of this subpart apply to any employee retirement benefits regardless of the date of issuance of the court order or the date when the employee or Member retires.

(2) The Associate Director will not increase the amount apportioned from current retirement benefits to satisfy an arrearage due the former spouse unless the court order states the amount of the arrearage and directs that it be paid from the employee retirement benefit. However, the Associate Director will honor the terms of a new or revised court order that either increases or decreases the former spouse's entitlement. These changes will be prospective only.

(3) Benefits payable to a former spouse from a retiree's annuity begin to accrue no earlier than the beginning of the month after receipt of a qualifying court order and the documentation required by § 831.1705, and terminate no later than the last day of the month before the death of the retiree.

(b)(1) The provisions of this subpart concerning former spouse annuities apply only with respect to an individual who, on or after May 7, 1985, is married to an employee or Member who, on or after May 7, 1985, retires under CSRS or dies during employment covered by CSRS.

(2) The survivor annuity for a former spouse commences and terminates in accordance with the court order. However, a court order will not be honored to the extent it would require an annuity to commence before—

(i) The day after the employee, Member, or retiree dies; or

(ii) The first day of the second month beginning after OPM receives the court order, together with such additional information required by § 831.1705, whichever is later. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8341(h)(3)(B) of title 5, United States Code.

§ 831.1712 Death of the former spouse.

(a) When the former spouse predeceases the retiree, and further employee retirement benefits that would have been subject to the court order are payable, the Associate Director will seek guidance from the court upon whose order the award to the former spouse was based about the proper disposition of the former spouse's share.

(b) The request for guidance from the court will—

(1) Explain the circumstances that led to the request; and

(2) Inform the court of limitations on payments under § 831.1713 applicable to the case; and

(3) Notify the court of the effect of its failure to provide guidance.

(c) While OPM is awaiting guidance from the court, the retiree will be paid only his or her share of the annuity. The former spouse's share may be disbursed only in accordance with paragraphs (d) and (e) of this section.

(d)(1) If no response (or an inadequate response) is received from the court within 60 days from the date of receipt of the request for guidance, the full annuity will be restored to the retiree effective on the date of the first annuity check due after the death of the former spouse.

(2) Disbursement will be made only after the completion of any reconsideration and appeals procedures required by § 831.109.

(e) Payment of all or part of the former spouse's share may be made only to one of the following—

(1) The retiree; or

(2) A child or children of the retiree (or a court-appointed representative for the benefit of such children); or

(3) The court (or other State, county or municipal agency which serves as a collecting and disbursing agent for the court).

(f) The request for guidance required by this section will be sent by certified mail, return receipt requested, addressed to the clerk of the court. Copies of the request for guidance will be sent by certified mail, return receipt requested, to the retiree and to the representative of the estate of the former spouse (if an address is available).

§ 831.1713 Limitations.

(a) Employee retirement benefits are subject to apportionment by court order only while the former employee or Member is living. Payment of apportioned amounts will be made only to the former spouse and/or the children of the former employee or Member. Payment will not be made to any of the following:

(1) The heirs or legatees of the former spouse; or

(2) The creditors of the former employee or Member, or the former spouse; or

(3) Other assignees of the former employee or Member, or the former spouse.

(b) The amount of payment under this subpart will not be less than one dollar and, in the absence of compelling circumstances, will be in whole dollars.

(c) In honoring and complying with a court order, the Associate Director will not disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payment, despite the existence of a special schedule of accrual or payment of amounts due the former spouse.

(d) Payments from employee retirement benefits under this subpart will be discontinued whenever the retiree's annuity payments are suspended or terminated. If annuity payments to the retiree are restored, payment to the former spouse will also resume.

(e) Since the former spouse is entitled to payments from employee retirement benefits only while the former employee or Member is living, the former spouse is personally liable for any payments from employee retirement benefits received after the death of the retiree.

§ 831.1714 Guidelines on interpreting court orders.

As circumstances require, OPM will publish in the FEDERAL REGISTER a notice of the guidelines it uses in interpreting court orders. Upon publication of the notice in the FEDERAL REGISTER of such guidelines, they will become an appendix to this subpart.

§ 831.1715 Liability.

OPM is not liable for any payment made from employee retirement benefits pursuant to a court order if such payment is made in accordance with the provisions of this subpart.

§ 831.1716 Receipt of multiple court orders.

In the event that OPM receives two or more qualifying court orders—

(a) When there are two or more former spouses, the court orders will be honored in the order in which they were issued to the maximum extent possible under §§ 831.614 and 831.1706.

(b) Where there are two or more court orders relating to the same former spouse, the one issued last will be honored.

§ 831.1717 Cost-of-living adjustments.

In cases where the court order apportions a percentage of the employee retirement benefit, the Associate Director will initially determine the amount of proper payment. That amount will be increased by future cost-of-living increases unless the court directs otherwise.

§ 831.1718 Settlements.

The former spouse may request that an amount be withheld from the retirement benefits that is less than the amount stipulated in the court order. This lower amount will be deemed a complete fulfillment of the obligation of OPM for the period in which the request is in effect.

APPENDIX A TO SUBPART Q OF PART 831—GUIDELINES FOR INTERPRETING STATE COURT ORDERS DIVIDING CIVIL SERVICE RETIREMENT BENEFITS

UNITED STATES OF AMERICA

OFFICE OF PERSONNEL MANAGEMENT

COMPENSATION GROUP

Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits

Recent inquires and controversies resulting from ambiguous court orders seeking to divide civil service retirement benefits have demonstrated a need for written guidelines explaining the interpretation which the

Office of Personnel Management will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of the Office of Retirement Programs, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which the Office of Personnel Management will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Cost-of-Living and Salary Adjustments

A. Unless the court directly and unequivocally orders otherwise, decrees which divide annuities either on a percentage basis or by use of a formula will be interpreted as subject to adjustment for cost-of-living and salary adjustments occurring after the issuance of the decree.

B. On the other hand, decrees which award a former spouse a specific dollar amount from the annuity will be interpreted as excluding cost-of-living and salary adjustments unless the court expressly orders their inclusion.

C. Orders which contain both a formula or percentage instruction and a corresponding fixed dollar amount will be interpreted as including the fixed amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control in cases where conflicting instructions appear.

D. A formula containing an instruction to calculate the former spouse's share effective at the time of divorce will not be interpreted to prevent cost-of-living or salary adjustments. To award a fixed dollar amount based on the rate of annuity which would have been paid if retirement occurred at the date of divorce, the decree must either state the dollar amount of the award or explain with sufficient clarity that salary adjustments, as well as service, after the date of the decree are to be disregarded in computing the former spouse's share.

II. Types of Annuity

A. Gross annuity will be interpreted as the amount shown as gross annuity on civil service annuity master record printouts, i.e., the annuity payable after any applicable survivor deduction but before any other deduction.

B. To divide an annuity before any applicable survivor deduction the decree must contain language to the effect that the division is to be made on the life rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of "gross annuity" will not accomplish this purpose.

C. Net annuity or disposable annuity will be interpreted to mean net annuity as defined in § 831.1703.

D. Orders which fail to state the type of annuity which they are dividing will be interpreted as dividing gross annuity (defined above).

III. Calculating Time

A. The smallest unit of time which will be used in computing formula in a decree is a month.

1. This policy is based on the provision of section 8332 of title 5, United States Code, which allows credit for service for years or twelfth parts thereof. Requests to calculate smaller units of time will not be honored.

2. Smaller periods of time stated in terms of decimal fractions of a year contained in a decree will be limited in application to simple numerical operations performed using the extra precise number. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts. For example, the share of a former spouse awarded a portion of the annuity equal to ½ of the fraction whose numerator is 12.863 years and whose denominator is the total service on which the annuity is based would be computed by taking ½ of the quotient obtained by dividing 12.863 by the total service measured *in years and twelfth parts.*

B. The term "military service" will generally be interpreted to include only periods of service within the definition of military service contained in section 8331(13) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as "military service," except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. When a decree contains a formula for dividing annuity which requires computation of service and unused sick leave has been used in the annuity computation, the amount of credit attributable to the unused sick leave will be computed as service if the formula instructs the use of "creditable service" (or other phrase using "credit" or its equivalent), but will exclude the time attributable to unused sick leave if the formula is based on "years of service" or "total service." Credit for unused sick leave always accrues on the date of separation for immediate retirement; it is never apportioned over the time when earned.

IV. Distinguishing Between Divisions of Annuity and Contributions

A. Orders which are unclear about whether they are dividing an annuity or contribution will be interpreted as dividing an annuity.

B. Orders using "annuities," "pensions," "retirement benefits," or similar terms will be interpreted as dividing an annuity and whatever other employee benefits became payable, such as refunds. Orders which divide "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms will be limited to division of the amount which the employee has paid into the Civil Service Retirement and Disability Fund.

V. Orders Directing the Annuitant To Make Payment

A. Orders which specifically direct the retiree to pay a portion of retirement benefits to a former spouse will be honored unless the retiree objects to direct payment by the Office of Personal Management, but will not be honored even if the retiree raises only a general objection to payment by the Office of Personnel Management.

B. Orders which direct or imply that the Office of Personnel Management is to make payment of a portion of retirement benefits, or are neutral about the source of payment, will be honored unless the retiree can demonstrate that the order is invalid.

Subpart R—Requests for Recovery of an Indebtedness From the Civil Service Retirement and Disability Fund

SOURCE: 46 FR 42835, Aug. 25, 1981, unless otherwise noted.

§ 831.1801 Purpose.

This subpart prescribes the procedures to be followed by Federal agencies when they seek to recover an indebtedness owed to the agency by a former employee subject to the Civil Service Retirement law, 5 U.S.C. 8331 *et seq.*, by means of setoff against amounts due and payable to that individual from the Civil Service Retirement and Disability Fund (Fund). This subpart also prescribes the procedures which the Office of Personnel Management shall follow with regard to any such request for setoff of indebtedness.

§ 831.1802 Scope.

This subpart applies to:

(a) Agencies defined by § 831.1803.

(b) Employees defined by § 831.1803.

§ 831.1803 Definitions.

"Agency" shall mean any Executive department, Military department, Government corporation or independent establishment as defined in Chapter I of title 5, United States Code, and the U.S. Postal Service, which is seeking recovery of an indebtedness through set-off against money due and payable to an employee or former employee from the Fund.

"Annuity claim" shall refer to a situation where a former employee has met all requirements for title to annuity under Sections 8336, 8337 or 8338 of title 5, United States Code, and has filed application for a monthly civil service annuity payment.

"Compromise" shall have the same meaning as in 4 CFR Chapter II, Part 103.

"Debtor" means an employee or former employee against whom recovery of an indebtedness through setoff against money due and payable from the Fund is sought by an agency.

"Employee" shall have the same meaning as in Sec. 8331 of title 5, United States Code.

"Fund" means the Civil Service Retirement and Disability Fund.

"Reconsideration" shall have the same meaning as in 4 CFR Chapter II, Part 102.

"Refund claim" shall refer to a situation where a former employee has filed an application under Sec. 8342(a) of title 5, United States Code, for a lump sum credit as defined in Sec. 8331(8) of title 5, United States Code.

"Waiver" shall mean a decision not to recover an overpayment under circumstances specified by the statute authorizing the waiver action.

§ 831.1804 When setoff may be requested.

Money payable from the Fund may be setoff to effect recovery of any valid indebtedness to the United States if all of the following conditions are met:

(a) The employee has been separated.

(b) The debt amounts to $100 or more.

(c) The creditor agency has exhausted all other means of recovery.

(d) The creditor agency has offered and completed the procedures prescribed by 4 CFR Chapter II, Part 102.

(e) The debtor has filed an application for his/her lump sum credit or for a monthly civil service annuity benefit.

§ 831.1805 Agency processing.

(a) If the creditor agency is also the debtor's former employing agency and the employee has just separated from his/her position in the agency, the agency shall submit Standard Form 2806, "Individual Retirement Record" within 30 days of the employee's separation. If a debt exists, a notation shall be made either in column 8 (Remarks) under "Fiscal Record" on the Standard Form 2806 or on an attachment to the Standard Form 2806, indicating that a debt is in existence, the basis for the debt, and the amount, if known.

(b) Every agency which intends to request recovery of indebtedness against a debtor through setoff against money due and payable from the Fund must first issue notice to the debtor as described in 4 CFR Chapter II, Part 102.

(c) The agency may adjudicate the claim of indebtedness solely on the basis of documentary evidence and any written submission submitted by the debtor unless the employee is entitled to a hearing on waiver or another aspect of the claim, and the employee requests a hearing.

(d) If there is entitlement to a hearing, the agency must grant the debtor a hearing under § 102.3 of 4 CFR Chapter II, before the agency can adjudicate the claim of indebtedness.

(e) If the debtor fails to respond to a notice issued under paragrqph (b) of this section, and there is no reason to believe that the debtor has not received the notice, the agency may adjudicate the claim of indebtedness upon evidence already in its possession.

(f) Upon completion of all procedures, the agency shall forward to OPM a certification of the amount of the indebtedness claimed, the basis for the claim, and that the procedures prescribed by 4 CFR Chapter II, Part 102 have been followed by the agency in adjudicating the claim. If the debtor failed to respond to the notice of the proposed action, and there is no reason to believe that the debtor has not received the notice, this fact must also be certified by the agency. Certification shall be made on Standard Form 2805, "Request for Recovery of Indebtedness Due the United States."

(g) If the agency has obtained a court judgment against the debtor specifying the amount of the indebtedness, the agency may submit a copy of the court judgment in place of the additional certification.

(h) If the debtor received the notice and agrees to the collection, the agency shall send a copy of his/her consent to the collection along with the Standard Form 2805.

§ 831.1806 OPM processing.

(a) *Refund claims.* (1) If an agency submits only Standard Form 2806 with a notation of pending adjudication of a claim of indebtedness or Standard Form 2805 without the necessary certification, OPM shall not make any payment to the creditor agency. OPM shall notify the agency that procedures under 4 CFR Chapter II, Part 102 must be completed and received within OPM within 120 days of the date of our notice to the agency. At the request of the agency, one extension of time, of no more than 60 days will be granted by OPM.

(2) during the period allotted the agency for the submission of its claim of indebtedness, OPM shall handle the former employee's request for his/her lump sum credit under Sec. 8342(a) of title 5, United States Code in one of two ways:

(i) If the amount of the indebtedness is known, OPM shall notify the former employee of the claim against his/her lump sum credit, withhold the amount of the indebtedness and pay the balance to the former employee.

(ii) If the amount of the indebtedness is not known, OPM shall not pay any amount to the former employee until the agency submits its Standard Form 2805 with the required certification, or the time limit for the agency submission of the claim expires, whichever comes first.

(b) *Annuity claims.* In the event an incomplete claim of indebtedness is submitted against a former employee who is receiving a monthly civil service annuity, OPM shall take no action to reduce the former employee's monthly annuity in response to the creditor agency's incomplete claim. OPM shall notify the agency that procedures under 4 CFR Chapter II, Part 102 must be completed and received within OPM within 120 days of the date of our notice to the agency. At the request of the agency, one extension of time, of no more than 60 days will be granted by OPM. Failure to supply the certification required within the time period (including any extensions granted by OPM) will preclude the agency from later seeking recovery by offset of the same debt against the individual's annuity payments.

(c) *Complete claims of indebtedness.* (1) In any case in which the agency has submitted all required certification of the indebtedness and of the procedures, no payment to the agency shall be made for at least 30 days. A copy of all certifications submitted by the agency shall be mailed to the debtor by OPM, along with notice of the intended collection.

(2) When a debtor who has been given notice under paragraph (c)(1) of this section responds to OPM with information that he/she has not been accorded the due process rights as certified by the agency under § 831.1805 of this part, OPM shall suspend any payments to the agency for the period of 60 days. Within that period, the agency must submit to OPM proof that the due process rights certified to were in fact granted to the debtor. Failure to supply such proof will result in a voiding of the agency's certification and release of any suspended funds to the debtor.

(3) If a debtor who is receiving a monthly civil service annuity which has been subjected to setoff informs OPM, after the expiration of the 60-day period set forth in paragraph (c)(2) of this section, that he/she did not receive the due process rights certified under § 831.1805 of this part, further setoff from annuity payments shall be suspended, and the procedures set forth in paragraph (c)(2) of this section shall be followed.

(d) In no case will OPM review—

(1) The merits of any decision by an agency with regard to reconsideration, compromise or waiver; or

(2) The determination by an agency that a hearing was not required in any particular proceeding.

§ 831.1807 Limits on withholding from annuity payments.

(a) Unless the creditor agency and the debtor agree in writing to withhold a larger percentage, or fraud or misrepresentation have been established, no more than twenty-five percent (25%) of the net amount of any monthly annuity payment will be withheld in any setoff action.

(b) A claim of indebtedness may be setoff in full against a lump sum refund payable to the debtor.

Subpart S—State Income Tax Withholding

AUTHORITY: 5 U.S.C. 8345(k).

SOURCE: 47 FR 50679, Nov. 9, 1982, unless otherwise noted.

§ 831.1901 Definitions.

For the purpose of this subpart:

"Agreement" means the Federal-State agreement contained in this subpart.

"Annuitant" means an employee or Member retired, or a spouse, widow, or widower receiving survivor benefits, under the provisions of subchapter III, chapter 83 of title 5, United States Code.

"Effective date" means, with respect to a request or revocation, that the request or revocation will be reflected in payments authorized after that date, and before the next request or revocation is implemented.

"Fund" means the Civil Service Retirement and Disability Fund as established and described in section 8348 of title 5, United States Code.

"Income tax" and "State income tax" mean any form of tax for which, under a State statute, (a) collection is provided, either in imposing on employers generally the duty of withholding sums from the compensation of employees and making returns of such sums to the State or by granting to employers generally the authority to withhold sums from the compensation of employees, if any employee voluntarily elects to make such sums withheld; and (b) the duty to withhold generally is imposed, or the authority to withhold generally is granted, with respect to the compensation of employees who are residents of the State.

"Net recurring payment" means the amount of annuity or survivor benefits (not recurring interim payments made while a claim is pending adjudication) payable to the annuitant on a monthly basis less the amounts currently being deducted for health benefits, Medicare, life insurance, Federal income tax, overpayment of annuity, indebtedness to the Government, voluntary allotments, waivers, or being paid to a third party or a court officer in compliance with a court order or decree.

"Net withholding" means the amount of State income tax deductions withheld during the previous calendar quarter as a result of requests which designated the State as payee, less similar deductions taken from prior payments which were cancelled in the previous calendar quarter."Proper State official" means a State officer authorized to bind the State contractually in matters relating to tax administration.

"Received" means, in respect to the magnetic tape containing requests and revocations, received at the special mailing address established by OPM for income tax requests, or, for those items not so received, received at the OPM data processing center charged with processing requests.

"Request" means, in regard to a request for tax withholding, a change in the amount withheld, or revocation of a prior request, a written submission from an annuitant in a format acceptable to the State which provides the annuitant's name, Civil Service Retirement Claim number, Social Security identification number, address, the amount to be withheld and the State to which payment is to be made, which is signed by the annuitant or, in the case of incompetence, his or her representative payee.

"State" means a State, the District of Columbia, or any territory or possession of the United States.

§ 831.1902 Federal-State agreements.

OPM will enter into an agreement with any State within 120 days of an application for agreement from the proper State official. The terms of the standard agreement will be sections 831.1903 through 831.1906 of this subpart. OPM and the State may agree to additional terms and provisions, insofar as those additional terms and provisions do not contradict or otherwise limit the terms of the standard agreement.

§ 831.1903 OPM responsibilities.

OPM will, in performance of this agreement:

(a) Process the magnetic tape containing State tax transactions against the annuity roll once a month at the time monthly recurring payments are prepared for the United States Treasury Department. Errors that are identified will not be processed into the file, and will be identified and returned to the State for resolution via the monthly error report. Collections of State income tax will continue in effect until the State requesting the initial action supplies either a valid revocation or change. The magnetic tape must be received 35 days prior to the date of the check in which the transactions are to be effective. For example, withholding transactions for the July 1 check must be received 5 days prior to June 1. If the magnetic tape submitted by the State cannot be read, OPM will notify the State of this fact, and if a satisfactory replacement can be supplied in time for monthly processing, it will be processed.

(b) Deduct from the regular, recurring annuity payments of an annuitant the amount he or she has so requested to be withheld, provided that:

(1) The amount of the request is an even dollar amount, not less than Five Dollars nor more than the net recurring amount. The State may set any even dollar amount above Five Dollars as a minimum withholding amount.

(2) The annuitant has not designated more than one other State for with-

holding purposes within the calendar year. The State can set any limit on the number of changes an annuitant may make in the amount to be withheld.

(c) Retain the amounts withheld in the Fund until payment is due.

(d) Pay the net withholding to the State on the last day of the first month following each calendar quarter.

(e) Make the following reports:

(1) A monthly report which will include all the State tax withholdings, cancellations and adjustments for the month, and also each request OPM was not able to process, with an explanation, in coded format, of the reason for rejection.

(2) A quarterly report which will include State, State address, quarterly withholdings, quarterly cancellations and adjustments, quarterly net withholdings and year-to-date amounts. Where cancelled or adjusted payments were made in a previous year, OPM shall append a listing of the cancelled or adjusted payments which shows the date and amount of each cancelled or adjusted tax withholding, and the name and Social Security identification number of the annuitant from whom it was withheld. If either party terminates the agreement and the amount of cancelled or adjusted deductions exceeds the amount withheld for the final quarter, then the quarterly report shall show the amount to be refunded to OPM and the address to which payment should be made.

(3) An annual summary report which contains the name, Social Security identification number, and total amount withheld from non-cancelled payments during the previous calendar year, for each annuitant who requested tax withholding payable to the State. In the event the annuitant had State income tax withholding in effect for more than one State in that calendar year, the report will show only the amount withheld for the State receiving the report.

(4) An annual report to each annuitant for whom State income taxes were withheld giving the amount of withholding paid to the State during the calendar year.

§ 831.1904 State responsibilities.

The State will, in performance of this agreement:

(a) Accept requests and revocations from annuitants who have designated that State income tax deductions will go to the State.

(b) Convert these requests on a monthly basis to a machine-readable magnetic tape using specifications received from OPM, and forward that tape to OPM for processing.

(c) Inform annuitants whose tax requests are rejected by OPM that the request was so rejected and of the reason why it was so rejected.

(d) Recognize that, to the extent not prohibited by State laws, records maintained by the State relating to this program are considered jointly maintained by OPM and are subject to the Privacy Act of 1974 (5 U.S.C. 552a). Accordingly, the States will maintain such records in accordance with that statute and OPM's implementing regulations at 5 CFR Part 297.

(e) Respond to requests of annuitants for information and advice in regard to State income tax withholding.

(f) Credit the amounts withheld from civil service annuities to the State tax liability of the respective annuitants, and, subject to applicable provisions of State law to the contrary, refund any balance over and above that liability to the annuitant, unless he or she should request otherwise.

(g) Surrender all tax withholding requests to OPM when this agreement is terminated or when the documents are not otherwise needed for this State tax withholding program.

(h) Allow OPM, the Comptroller General or any of their duly authorized representatives access to, and the right to examine, all records, books, papers or documents related to the processing of requests for State income tax withholding from civil service annuities.

§ 831.1905 Additional provisions.

These additional provisions are also binding on the State and OPM:

(a) A request or revocation is effective when processed by OPM. OPM will process each request by the first day of the second month following the month in which it is received, but incurs no liability or indebtedness by its failure to do so.

(b) Any amount deducted from an annuity payment and paid to the State as a result of a request is deemed properly paid, unless the annuity payment itself is cancelled.

(c) OPM will provide the State with the information necessary to properly process a request for State income tax withholding.

(d) If the State is paid withholding which is contrary to the terms of the annuitant's request, the State is liable to the annuitant for the amount improperly withheld, and subject to account verification from OPM, agrees to pay that amount to the annuitant on demand.

(e) In the case of a disputed amount in any of the reports described and authorized by this agreement, the Associate Director for Compensation of OPM will issue an accounting. If the State finds this accounting unacceptable, it may then and only then pursue such remedies as are otherwise available.

(f) If a State receives an overpayment of monies properly belonging to the Fund, OPM will offset the overpayment from a future payment due the State. If there are no further payments due the State, OPM will inform the State in writing of the amount due. Within 60 days of the date of receipt of that communication the State will make payment of the amount due.

§ 831.1906 Agreement modification and termination.

This agreement may be modified or terminated in the following manner:

(a) Either party may suggest a modification of non-regulatory provisions of the agreement in writing to the other party. The other party must accept or reject the modification within 60 calendar days of the date of the suggestion.

(b) The agreement may be terminated by either party on 60 calendar days written notice.

(c) OPM may modify this agreement unilaterally through the rule making process described in sections 553, 1103, 1105 of title 5, United States Code.

§ 831.1907 Authority to use the Federal Personnel Manual System.

OPM may provide such further rules, procedural instructions, and operational guidance as may be necessary and proper under this Subpart and not inconsistent therewith, in the Federal Personnel Manual System.

Subpart T—Payment of Lump Sums

SOURCE: 50 FR 20081, May 13, 1985, unless otherwise noted.

§ 831.2001 Definitions.

"Court order or decree" means the order or decree of any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands or any Indian court, as defined section 8331(24) of title 5, United States Code.

"Current spouse" means a person who is married to the employee or Member at the time the application for refund is filed.

"Former spouse" means a living person who was married for at least 9 months to an employee or Member who had performed at least 18 months of creditable service in a position covered by the retirement system.

"Retirement system" means the civil service retirement system as described in subchapter III of chapter 83 of title 5, United States Code.

§ 831.2002 Eligibility for lump-sum payment upon filing an Application for Refund of Retirement Deductions (SF 2802).

Except as provided in §§ 831.2007 through 2009 or in section 3716 of title 31, United States Code, on administrative offset for government claims, a former employee or Member who has been separated from a covered position for at least 31 days at the time of filing an application for refund and who is ineligible for an annuity commencing within 31 days after the date of filing an application for refund is eligible for a refund for the total lump-sum credit to his or her credit in the Retirement Fund.

§ 831.2003 Eligibility for lump-sum payment upon death or retirement.

(a) If there is no survivor who is entitled to monthly survivor annuity benefits on the death of a former employee, Member, annuitant, or survivor annuitant, the total lump-sum credit to the former employee's or Member's credit in the Retirement Fund is payable, except as provided in section 3716 of title 31, United States Code, on administrative offset for government claims, to the person(s) entitled in the normal order of precedence described in section 8342(c) of title 5, United States Code.

(b) If an annuity is payable, the former employee, Member or the person entitled in the order of precedence described in section 8342(c) of title 5, United States Code, may be paid, except as provided in section 3716 of title 31, United States Code, administrative offset for government claims, lump-sum payment of—

(1) Retirement deductions withheld from the employee's or Member's pay after he or she became eligible for the maximum annuity, if the employee or Member does not elect to treat those deductions as voluntary contributions toward the purchase of an additional annuity; and

(2) Retirement deductions withheld from the employee's or Member's pay during his or her final period of service if the employee or Member was not subject to the retirement system for at least one of the last 2 years before final separation from service and if the service covered by the deductions is not used for title to annuity; and

(3) Partial redeposits of refunds previously paid; and

(4) Partial deposits for civilian service performed on and after October 1, 1982; and

(5) Partial deposits for post-1956 military service; and

(6) Annuity accrued and unpaid.

(c) A former employee, Member, or survivor who is eligible for an annuity may not be paid a lump-sum payment of—

(1) Partial or completed deposits for nondeduction civilian service performed before October 1, 1982, unless the service covered by the deposit is not creditable under the retirement system; or

(2) Completed deposits for nondeduction civilian service performed on and after October 1, 1982, unless the service covered by the deposit is not creditable under the retirement system; or

(3) Completed deposits for post-1956 military services, unless the service covered by the deposit is not creditable under the retirement system.

Payments of the partial or completed deposits mentioned in this paragraph are subject to 31 U.S.C. 3716 (administrative offset for government claims).

§ 831.2004 Amount of lump-sums.

If applicable, the amount of a refund will include interest computed as described in § 831.105(b).

§ 831.2005 Designation of beneficiary for lump-sum payment.

(a) The Designation of Beneficiary must be in writing, signed, and witnessed,and received in OPM before the death of the designator.

(b) No change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by this section, has any force or effect.

(c) A witness to a Designation of Beneficiary is ineligible to receive payment as a beneficiary.

(d) Any person, firm, corporation, or legal entity may be named as beneficiary.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, and this right cannot be waived or restricted.

§ 831.2006 Designation of agent by next of kin.

When a deceased employee, Member, or annuitant has not named a beneficiary and one of the next of kin entitled makes a claim for lump-sum benefit, other next of kin entitled to share in the lump-sum benefit may designate the one who made the claim to act as their agent to receive their distributive shares.

§ 831.2007 Notification of current and/or former spouse before payment of lump sum.

(a) Payment of the lump-sum credit based on a refund application filed on or after May 7, 1985, may be made only if any current spouse and any former spouse (from whom the employee or Member was divorced after May 6, 1985) are notified of the former employee's or Member's application.

(b) Notification of the former spouse will not be required if the marriage to the former spouse was of less than 9 months duration or if the employee has not completed a total of 18 months of creditable service covered under the retirement system.

(c) Proof of notification will consist of a signed and witnessed statement by the current and/or former spouse on a form provided by OPM acknowledging that he or she has been informed of the former employee's or Member's application for refund and the consequences of the refund on the current or former spouse's possible annuity entitlement. This statement must be presented to the employing agency or OPM when filing the Application for Refund of Retirement Deductions (SF 2802).

(d) If the current and/or former spouse refuses to acknowledge the notification or the employee or Member is otherwise unable to obtain the acknowledgement, the employee or Member must submit—

(1) A signed postal return receipt as evidence that the notification was received at the address of the current or former spouse; or

(2) Affidavits signed by two individuals who witnessed the employee's or Member's attempt to personally notify the current or former spouse. The witnesses must attest that they were in the presence of the employee or Member and the current or former spouse when the notification attempt was made and that the employee's or Member's purpose should have been clear to the current or former spouse.

(e) If a *former* spouse refuses to acknowledge the notification or the employee or Member is otherwise unable to obtain the acknowledgement of a former spouse, the employee or Member may submit a certified copy of a court order or decree wherein the former spouse has relinquished all claim to the employee's or Member's annuity or which awards the annuity wholly to the employee or Member.

§ 831.2008 Waiver of spouse and/or former spouse notification requirement.

The current and/or former spouse notification requirement will be waived upon a showing that the current and/or former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(a) A judicial or administrative determination that the current and/or former spouse's whereabouts cannot be determined; or

(b) Affidavits by the former employee or Member and two other persons at least one of whom is not related to the former employee or Member attesting to the inability to locate the current and/or former spouse and stating the efforts made to locate the current and/or former spouse.

§ 831.2009 Court orders or decrees preventing payment of lump sums.

(a) Payment of the lump-sum credit to a former employee or Member will be subject to the terms of any court order or decree issued with respect to any former spouse from whom the employee or Member was divorced after May 6, 1985 if—

(1) The court order or decree expressly relates to any portion of the lump-sum credit involved; and

(2) Payment of the lump-sum credit would extinguish entitlement of the former spouse to a survivor annuity under section 8341(h) of title 5, United States Code, or to any portion of an annuity under section 8345(j) of title 5, United States Code.

(b) For paragraph (a) of this section to have effect, OPM must be in receipt of the court order or decree before authorizing payment of the refund.

(c)(1) In the event that OPM receives two or more court orders or decrees—

(i) When there are two former spouses, the court orders or decrees will be honored in the order in which they were issued until the lump-sum has been exhausted.

(ii) When there are two or more court orders or decrees relating to the same former spouse, the one issued last will be honored first.

(2) In no event will the amount paid out exceed the amount of the lump-sum credit.

(d) OPM is not liable for any payment made from money due from or payable by OPM to any individual pursuant to a court order or decree regular on its face, if such payment is made in accordance with this subpart.

Subpart U—Deposits for Military Service

AUTHORITY: 5 U.S.C. 8347, unless otherwise noted.

SOURCE: 48 FR 38788, Aug. 26, 1983, unless otherwise noted.

§ 831.2101 Purpose.

This subpart prescribes the procedures to be followed when an employee or Member (or survivor of an employee or Member) wishes to make a deposit for service, and when a former employee or Member who retires or separates from civilian service with title to annuity after September 8, 1982, but before October 1, 1983 (or survivor of such employee or Member), wishes to make a deposit for service.

§ 831.2102 Scope.

This subpart applies to all agencies with employees occupying positions subject to subchapter III of chapter 83 of title 5, United States Code, the United States Senate, and the United States House of Representatives.

§ 831.2103 Definitions.

"Employee" shall have the same meaning as in 5 U.S.C. 8331(1).

"Estimated earnings" is an estimate of basic pay for a period of military service, as determined by an authorized official of the Department of Defense the Department of Transportation, the Department of Commerce, or the Department of Health and Human Services.

"Fund" is the Civil Service Retirement and Disability Fund.

"Member" shall have the same meaning as in 5 U.S.C. 8331(2).

"OPM" is the Office of Personnel Management.

"Period of service" is the total years, months, and days from date of initial entry on active duty (or January 1, 1957, if that is later) to date of final discharge for enlisted military personnel, and to date of final release from active duty for officers and reservists. "Period of service" includes consecutive periods of service where there is no break in service, but does not include any lost time.

"Service" is active honorable military service performed after December 31, 1956.

"Sufficient evidence" of basic pay for service exists when the employee, Member, or survivor eligible to make a deposit for service provides copies of all official military pay documents, as identified in Federal Personnel Manual instructions published by OPM, which show the exact basic pay he or she received for a full period of service. If an employee, Member, or survivor does not have sufficient evidence of basic pay, he or she shall obtain a statement of estimated earnings from the appropriate branch of the military service.

"Survivor" shall have the same meaning as in 5 U.S.C. 8331(10).

§ 831.2104 Eligibility to make deposit.

The following individuals may make deposit for any full period of service performed before the separation on which title to civil service annuity is based:

(a) An employee or Member currently occupying a position subject to subchapter III of chapter 83 of title 5, United States Code, and the survivor(s) of such an employee or Member who dies in service (including a person who was eligible to make a deposit under this paragraph but who failed to make the deposit before separation from service due to administrative error); and

(b) A former employee or Member who was separated with title to an annuity or who retired from a position subject to subchapter III of chapter 83 of title 5, United States Code, after September 8, 1982, and before October 1, 1983, and the survivor(s) of such an employee or Member.

[48 FR 38788, Aug. 26, 1983, as amended at 49 FR 20631, May 16, 1984]

§ 831.2105 Filing an application to make deposit.

(a) An individual described in § 831.2104(a) of this subpart shall file an application for deposit with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate.

(b) An individual described in § 831.2104(b) of this subpart may, at the time of filing an application for retirement or death benefits, file an application for deposit or complete a deposit with OPM.

§ 831.2106 Processing applications for deposit for service.

(a) The agency, Clerk of the House of Representatives, or Secretary of the Senate shall have the employee or Member:

(1) Complete an application to make deposit;

(2) Provide a copy of his or her DD 214 or its equivalent to verify the period(s) of service; and

(3) Provide sufficient evidence of basic pay, if available, or a statement of estimated earnings.

(b) Upon receipt of the application, the DD 214(s), and either sufficient evidence of basic pay, if available, or a statement of estimated earnings, the agency, Clerk of the House of Representatives, or Secretary of the Senate shall multiply the amount of basic pay by 7 percent to compute the exact deposit owed, exclusive of any interest.

(c) If interest is applicable, it shall be computed in accordance with instructions published by OPM in the Federal Personnel Manual.

(d) The agency, Clerk of the House of Representatives, or Secretary of the Senate shall establish a deposit account showing the total amount due, and a payment schedule (unless deposit is made in a lump sum), and record the date and amount of each payment.

(e) An individual who is eligible to make deposit to OPM shall submit an application to make deposit, accompanied by a copy of his or her DD 214(s) or its (their) equivalent(s), as well as sufficient evidence of basic pay, if available, or a statement of estimated earnings, to OPM.

§ 831.2107 Payments on deposits.

(a) Deposits made to agencies, the Clerk of the House of Representatives or the Secretary of the Senate.

(1) Deposits made to agencies, the Clerk of the House of Representatives or the Secretary of the Senate shall be collected in full in one lump sum whenever this is possible. Notwithstanding the provisions of paragraph (a)(2) of this section, a separated employee who, through administrative error, did not make or complete the deposit prior to his or her separation must complete the deposit in a lump sum within the time limit set by OPM when it rules that an administrative error has been made.

(2) If the employee or Member cannot make payment in a lump sum, the agency, the Clerk of the House of Representatives, or the Secretary of the Senate shall accept installment payments (by allotments or otherwise). However, agencies, the Clerk of the House of Representatives, and the Secretary of the Senate will not be required to accept individual checks in amounts of less than $50.

(3) If the employee or Member dies, the employing agency, the Clerk of the House of Representatives or the Secretary of the Senate shall advise the survivor of the right to make or complete a deposit. If the survivor decides to make or complete the payment, the agency, the Clerk of the House of Representatives, or the Secretary of the Senate shall collect the amount due in one lump sum.

(4) Payments received by the employing agency, the Clerk of the House of Representatives, or the Secretary of the Senate shall be remitted

immediately to OPM for deposit to the Fund.

(5) Once the employee's, Member's, or survivor's deposit has been paid in full or closed out, the employing agency, the Clerk of the House of Representatives, or the Secretary of the Senate shall submit documentation pertaining to the deposit to OPM, in accordance with instructions published in the Federal Personnel Manual.

(6) Deposits must be made for full periods of service.

(b) Deposits made to OPM.

(1) Deposits made to OPM shall be made in a lump sum prior to final adjudication of the application for retirement or survivor benefits.

(2) Deposits must be made for full periods of service.

[48 FR 38788, Aug. 26, 1983, as amended at 49 FR 20631, May 16, 1984]

PART 870—BASIC LIFE INSURANCE

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870.901 Designation of beneficiary.

AUTHORITY: 5 U.S.C. 8716.

SOURCE: 49 FR 3034, Jan. 25, 1984, unless otherwise noted.

Subpart A—Administration and General Provisions

§ 870.101 Actions on the policy.

Life and accidental death and dismemberment benefits ("basic insurance") shall be payable in accordance with a policy or policies purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, under section 8709 of title 5, United States Code. Actions at law or in equity to recover on an insurance policy, in which there is not alleged any breach of any obligation undertaken by the United States, shall be brought against the insurance company.

§ 870.102 Correction of an error, mistake, or omission.

OPM's Associate Director for Compensation or his/her designee may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director or his/her designee that it would be against equity and good conscience not to do so.

§ 870.103 Definitions.

"Annuitant" means a former employee entitled to an annuity under a retirement system established for employees.

"Assign" and "assignment" refer to a judge's irrevocable transfer to another person of all incidents of ownership of

FEGLI coverage (except family optional insurance).

"Assignee" means the person or persons to whom a judge irrevocably transfers ownership of basic life insurance and, if applicable, standard optional life insurance and additional optional life insurance.

"Compensation" means compensation under subchapter I of chapter 81 of title 5, United States Code, which is payable because of an on-the-job injury or disease.

"Compensationer" means an employee or former employee who is entitled to compensation and whom the Department of Labor determines is unable to return to duty.

"Employee" means an individual who is an "employee" as defined by section 8701 of title 5, United States Code.

"Judge" means an individual appointed as a Federal justice or judge under Article I or Article III of the Constitution. Administrative law judges, bankruptcy judges, and magistrates are not judges for purposes of assignment of FEGLI coverage.

"OPM" means the Office of Personnel Management.

"OWCP" means the Office of Workers' Compensation Programs, U.S. Department of Labor, which administers subchapter I of chapter 81 of title 5, United States Code.

"Service" means civilian service which is creditable under subchapter III of chapter 83 of title 5, United States Code.

[49 FR 3034, Jan. 25, 1984, as amended at 50 FR 8096, Feb. 28, 1985]

Subpart B—Coverage

§ 870.201 Coverage.

Except as provided in § 870.202, each employee shall, at the time and subject to the conditions prescribed in this part, be insured for an amount of basic insurance as specified in §§ 870.301, 870.602, and 870.702.

§ 870.202 Exclusions.

(a) Employees in the following groups are excluded from the application of this part:

(1) An employee serving under an appointment limited to one year or less, except: (i) An employee so appointed for full-time employment or part-time employment with a regular tour of duty without break in service or after a separation of three days or less, following service in which he/she was insured, (ii) an acting postmaster, and (iii) a Presidential appointee appointed to fill an unexpired term.

(2) An employee whose employment is of uncertain or purely temporary duration, or who is employed for brief periods at intervals, and an employee who is expected to work less than six months in each year, except for an employee who is employed under an OPM-approved career-related work-study program under Schedule B of at least one year's duration and who is expected to be in a pay status for at least one-third of the total period of time from the date of the first appointment to the completion of the work-study program.

(3) An intermittent employee—a non-full-time employee without a regularly scheduled tour of duty, except when the employee enters into such a status without break in service or after a separation of three days or less, following service in a position in which he/she was insured and to which he/she is expected to return.

(4) An employee whose pay on an annual basis is $12 a year or less.

(5) A beneficiary or patient employee in a government hospital or home.

(6) An employee paid on a contract or fee basis, except an employee who is a citizen of the United States who is appointed by a contract between the employee and the Federal employing authority which requires his/her personal service and is paid on the basis of units of time.

(7) An employee paid on a piecework basis, except one whose work schedule provides for full-time service or part-time service with a regularly scheduled tour of duty.

(b) OPM shall make the final determination regarding applicability of the above classifications to a specific employee or group of employees.

§ 870.203 Effective dates of insurance coverage.

(a)(1) Following an appointment or transfer to a position in which an employee is not excluded from coverage, the employee is insured on the day he/she actually enters on duty in pay status, unless he/she files a waiver of basic insurance coverage before the end of his/her first pay period with the employing office, or a previously filed waiver remains uncanceled.

(2) An employee who moves from a position in which he/she is insured to another position in which he/she is not excluded from coverage is insured on the effective date of the change, unless the employee files a waiver of basic insurance coverage with the new employing office before the end of his/her first pay period in the new position.

(b) An employee who returns to pay and duty status after a period of more than 12 months of nonpay status is insured at the time he/she actually enters on duty in pay status, unless the employee files a waiver of basic coverage before the end of the first pay period with the employing office, or had previously filed such a waiver which remains uncanceled.

(c) In the case of an employee serving in cooperation with a non-Federal agency and who is paid in whole or in part from non-Federal funds, insurance may not take effect until the date set by OPM for coverage to begin. This date is to be part of an agreement between OPM and the non-Federal agency providing (1) that the required withholdings and contributions will be made from federally controlled funds and timely deposited into the Employees' Life Insurance Fund, or (2) that the cooperating non-Federal agency will, by written agreement with the Federal agency, make the required withholdings and contributions from non-Federal funds and will transmit the total of these amounts to the Federal agency for timely deposit into the Employees' Life Insurance Fund.

(d) An open enrollment election of basic life insurance filed during the period from June 1 through July 1, 1985, is effective on the first day of the first day period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for at least 32 hours. A part-time employee will need to have been in a pay and duty status for one-half of the regularly-scheduled tour of duty indicated on his or her current Standard Form 50 for newly-elected coverage to become effective. An employee who has no regularly-scheduled tour of duty or who is employed on an intermittent basis will have to have been in a pay and duty status for one-half of the hours customarily worked before newly-elected coverage can become effective. For the purpose of this subsection, employing offices can determine the number of hours customarily worked by averaging the number of hours worked in the calendar year quarter ending June 30, 1985.

[49 FR 3034, Jan. 25, 1984, as amended at 50 FR 26688, June 28, 1985]

§ 870.204 Waiver and cancellation of waiver of insurance coverage.

(a) An insured person may cancel his/her basic insurance at any time by filing a waiver of basic insurance coverage. An employee files with the employing office. An annuitant files with OPM or other office that administers his/her retirement system. If still employed, a compensationer files with the employing office, and, if not still employed, with OWCP. The waiver shall be effective and the insurance shall cease at the end of the pay period in which the waiver is properly filed.

(b) An employee who has filed a waiver of basic insurance coverage may cancel the waiver and become insured if:

(1) He/she is under age 50;

(2) At least one year has elapsed since the effective date of the waiver; and

(3) He/she furnishes satisfactory evidence of insurability.

(c) An employee who has complied with paragraph (b) of this section is insured when he/she actually enters on duty in pay status in a position in which he/she is not excluded from insurance by law or regulation, following the approval of his/her Request for Insurance by the Office of Federal

Employees' Group Life Insurance established by the insurance company. The approval is revoked automatically and the employee is not insured unless he/she enters on duty in pay status within 31 days following the date of the approval.

(d) Waivers of basic insurance coverage filed on or before February 28, 1981, are automatically canceled effective on the first day an employee whose waiver is so canceled actually enters on duty in a pay status on or after April 1, 1981. Basic insurance coverage automatically attaches on the date of the cancellation unless the employee files a waiver of basic insurance with the employing office before the end of the pay period during which the cancellation became effective.

(e) Notwithstanding paragraphs (b), (c), and (d) of this section, the waiver of basic insurance coverage of an employee who is or becomes an employee of the United States Postal Service on or after July 20, 1974, in a position in which he/she is not excluded from insurance coverage is automatically canceled and he/she is insured for basic insurance on the first day he/she actually enters on duty in a pay status on or after July 24, 1974.

(f) (1) A previous waiver is automatically canceled at time of reinstatement on or after April 1, 1981, if an employee has been separated from service for at least 180 days. If no new waiver is filed, basic insurance coverage automatically attaches on the date the employee actually enters on duty in a pay status in a position wherein he/she is not excluded from insurance by law or regulations.

(2) An employee who returned to Federal service between April 1, 1981, and December 8, 1983, after a 180-day break in service may elect basic insurance coverage upon application to his or her employing office before March 7, 1984.

(g)(1) An open enrollment period will be held from June 1 through July 1, 1985, during which time employees otherwise eligible for coverage may cancel their existing waivers of coverage by affirmatively electing to be insured on a form designated by OPM.

(2) An employing office may make a determination, within 6 months after the June 1 through July 1, 1985 open enrollment period, that an employee was unable, for cause beyond his or her control, to cancel his or her then existing waiver of coverage by affirmatively electing to be insured during the 1985 open enrollment period. The employee shall be permitted to submit an affirmative election of coverage within 31 days after he or she is advised of that determination. Basic life insurance coverage in that case is retroactive to the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for a sufficient length of time, as specified in § 870.203(d), to acquire coverage. Failure on the part of the employee to file an election within the 31 days prescribed in this paragraph shall be deemed a waiver of all coverage.

[49 FR 3034, Jan. 25, 1984, as amended at 50 FR 26688, June 28, 1985]

§ 870.205 Reconsideration.

(a) *Who may file.* An individual may request OPM to reconsider an agency decision or an inital decision of OPM denying basic insurance coverage.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by OPM. OPM may extend the time limit as provided in paragraph (e) of this section.

(c) *Initial OPM decision.* A written OPM decision which states the right to request reconsideration shall be considered an initial decision as used in paragraph (a) of this section when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration.

(d) *Reconsideration.* A request for reconsideration of an initial OPM decision must be made in writing, must include the claimant's name, address, date of birth, claim number, if applicable, and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial OPM decision must be filed within 30 calendar days from the date of the initial decision. OPM may extend the time limit for filing when the individual shows that he/she was not notified of the time limit or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration, OPM shall issue a final decision which shall be in writing, and shall fully set forth the findings and conclusions of OPM.

Subpart C—Amount of Insurance

§ 870.301 Basic insurance amount (BIA).

(a) An employee's basic insurance amount (BIA) is the greater of (1) his/her annual rate of basic pay, rounded to the next higher multiple of $1,000, plus $2,000, or (2) $10,000. However, in no event may the BIA be more than the annual rate of pay for positions at Level II of the Executive Schedule under section 5313 of title 5, U.S.C., rounded to the next higher thousand, plus $2,000. The BIA of an individual who is entitled to continue basic life insurance coverage as an annuitant or compensationer is the BIA in effect at the time the insurance to which he/she is entitled as an employee would stop under § 870.501.

(b) Effective on the first day of the first pay period beginning on or after October 1, 1981, the amount of an employee's basic life insurance coverage is equal to his/her BIA multiplied by the appropriate factor determined on the basis of the age of the insured individual, as follows:

Age	Factor
35 or under	2.0
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0

§ 870.302 Annual rates of pay.

(a) An insured employee's annual pay is his/her annual rate of basic pay as fixed by law or regulation, except that annual pay for this purpose shall include premium pay under section 5545(c)(1) of title 5, United States Code, and, for a law enforcement officer as defined under 5 U.S.C. 8331(20) and § 831.903 of this chapter, premium pay under 5 U.S.C. 5545(c)(2).

(b) A pay rate of other than annual salary is converted to an annual rate by multiplying the prescribed rate by the number of pay units in a 52-week work year.

(c) The annual pay for a part-time employee is his/her basic pay applicable to his/her tour of duty in a 52-week work year.

(d) The annual pay for an employee who legally and concurrently serves in more than one position, other than as a part-time flexible schedule employee in the Postal Service, is the sum of the annual basic pay fixed by law or regulation for each position.

Subpart D—Withholdings and Contributions

§ 870.401 Withholdings and contributions.

(a) Effective August 1, 1985, during each pay period in which an insured employee is in pay status for any part of the period, $0.20 for each $1,000 of the employee's BIA shall be withheld from the biweekly pay of the employee. The amount withheld from the pay of an employee who is paid on other than a biweekly basis is determined at a proportionate rate, adjusted to the nearest one-tenth of one cent.

(b) The amount withheld from the pay of an insured employee whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate of $0.20 for each $1,000 of the employee's BIA to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

(c) The amount withheld from the pay of an insured employee whose BIA changes during a pay period is based on the last BIA in force during the pay period.

(d) For each period in which an employee is insured there shall be contributed from the respective appropriation or fund which is used for the payment of his/her pay (or, in the case of an elected official, from such appropriation or fund as may be available for payment of other pay of the same office or establishment) an amount equal to one-half the amount withheld from the employee's pay.

(e) Notwithstanding the preceding paragraphs of this section, the United States Postal Service contributes the full cost of basic insurance, that is, the sum of the amounts otherwise to be withheld and contributed under paragraphs (a), (b), (c), and (d) of this section, for each period in which an employee of the United States Postal Service is insured.

(f)(1) Except as provided under paragraph (g) of this section, an insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under § 870.601(c)(2) or § 870.701(c)(2) (maximum reduction of 75 percent after age 65) shall have withheld from his or her payments basic life insurance withholdings at the monthly rate (for annuitants) of $0.433 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.10 for each $1,000 of the BIA.

(2) An insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under §§ 870.601(c)(3) or 870.701(c)(3) (maximum reduction of 50 percent after age 65) shall have withheld from his/her payments basic life insurance withholdings at the monthly rate (for annuitants) of $0.65 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.15 for each $1,000 of the BIA.

(3) An insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under §§ 870.601(c)(4) or 870.701(c)(4) (no reductions) shall have withheld from his/her payments basic life insurance withholdings at the monthly rate (for annuitants) of $1.75 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.404 for each $1,000 of the BIA.

(g)(1) Basic life insurance withholdings required under paragraph (f)(1) of this section shall not be made for any month after the calendar month in which the individual becomes 65 years of age and shall not apply for an individual who retires or commences compensation payments before January 1, 1990.

(2) Withholdings are not required for the period between the end of the pay period in which an individual separates from service and the beginning of the annuity or compensation payments, if later.

(h) If an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8708 of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. A determination whether to waive collection of the overpayment of pay shall be made in accordance with 5 U.S.C. 5584 as emplemented by 4 CFR, Chapter I, Subchapter G, unless the agency involved is excluded from application of 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

[49 FR 3034, Jan. 25, 1984, as amended at 50 FR 26688, June 28, 1985]

Subpart E—Termination and Conversion

§ 870.501 Termination and conversion of insurance coverage.

(a) Except as provided in §§ 870.601 and 870.701, the basic insurance of an insured employee stops on the date of his/her separation from the service, subject to a 31-day extension of basic life insurance coverage.

(b) The basic insurance of an insured employee who moves without a break in service to a position in which he/she is excluded from basic insurance stops on his/her last day on the roll in the former position, subject to a 31-day extension of basic life insurance coverage.

(c) Except as provided in paragraph (e) of this section and in §§ 870.601 and 870.701, the basic insurance of an insured employee continues without cost to the employee while he/she is in nonpay status for up to 12 months, at which time it stops, subject to a 31-day extension of basic life insurance coverage. The 12 months' nonpay status may be continuous or broken by periods of less than 4 consecutive months in pay status. If an employee has at least 4 consecutive months in pay status after a period of nonpay status, he/she is entitled to begin the 12 months' continuation of basic insurance anew. If after a return to duty he/she is not entitled to any further continuation of basic insurance in nonpay status because he/she has not had 4 consecutive months of pay status since exhausting his/her 12 months' continuation in nonpay status, his/her basic insurance stops the last day of his/her last pay period in pay status. For the purposes of this paragraph, 4 consecutive months in pay status means any 4-month period during which the employee is in pay status for at least part of each pay period.

(d) The basic insurance of an insured employee who enters on active duty or active duty for training as a member of a uniformed service stops, subject to a 31-day extension of basic life insurance coverage, on the day preceding his/her entrance on such duty, unless the period of such duty is covered by military leave with pay from his/her civilian position. This stopping of basic insurance coverage does not operate with respect to basic insurance granted before January 1, 1957, to commissioned officers of the Coast and Geodetic Survey or of the Regular Corps of the Public Health Service.

(e)(1) After termination of group coverage for any reason other than voluntary cancellation, an employee may, upon application and without medical examination, convert all or any part of his/her basic life insurance to an individual policy. The rates of the individual policy are the rates applicable to the employee's attained age and class of risk. An employee is eligible to convert the policy only if he/she does not return, within 3 calendar days from the terminating event, to a position allowing coverage under the group plan.

(2) The employing agency must notify the employee of the loss of group coverage and the right to convert to an individual policy either prior to or immediately following the event causing the loss of coverage.

(3) The employee's request for conversion information must be submitted to the Office of Federal Employees' Group Life Insurance and postmarked within 31 days following the date of the terminating event or within 31 days of the date the employee received notice of loss of the group coverage and right to convert, whichever is later.

(4) When an agency fails to provide the notification described in paragraph (e)(2) of this section, or the employee fails for other reasons beyond his/her control to request conversion as described in paragraph (e)(3) of this section, he/she may request conversion to an individual policy by writing to the Office of Federal Employees' Group Life Insurance. Such a request must be filed within six months after an employee becomes eligible to convert basic life insurance. The employee must show that he/she was not notified of the loss of coverage and the right to convert, and was not otherwise aware of it, or that he/she was unable, for cause beyond his/her control, to convert the basic life insurance. The Office of Federal Employees' Group Life Insurance will determine if the employee is eligible to convert, and when the determination is affirmative, the employee may convert within 31 days of that determination.

(5) When an employee converts his/her basic life insurance coverage anytime after the group coverage has ended, the individual plan coverage is retroactive to the day following the day the group coverage ended. The employee must pay the premiums due for the retroactive period.

(6) An employee who fails to exercise his/her right to convert to an individual policy within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, whichever is later, is deemed as

having declined coverage unless OFEGLI determines the failure was for cause beyond his/her control as described in paragraph (e)(4) of this section.

(f) The 31-day extension coverage provided under this subpart cannot be extended beyond 31 days, nor is it contingent upon timely issuance of notice of the right of conversion to an individual policy.

[49 FR 3034, Jan. 25, 1984, as amended at 50 FR 7903, Feb. 27, 1985]

Subpart F—Annuitants

§ 870.601 Eligibility for life insurance.

(a) The basic life insurance of an insured individual who is separated from service is continued or reinstated if he/she:

(1) Is entitled to retirement on immediate annuity under a retirement system for civilian employees of the Federal or District of Columbia Governments;

(2) Has been enrolled for basic insurance for the five years of service immediately preceding the date of retirement or the full period(s) of service during which he/she was entitled to be insured;

(3) Has met all requirements for an immediate annuity (including filing of application where necessary), whether or not final administrative action has been taken; and

(4) Has not exercised his/her right to convert to an individual life insurance policy under § 870.501(e). If, after an individual has exercised the conversion right, it is determined that he/she is eligible to continue the group coverage as an annuitant and the group enrollment is reinstated in accordance with this subpart, the conversion policy shall be voided and the premiums already paid on such policy shall be refunded to the insured.

(b) An individual who meets the requirements under paragraphs (a) or (g) of this section for continuation or reinstatement of life insurance shall execute a written election on a form furnished by OPM at the time entitlement to continuation or reinstatement of the insured arises. To be considered valid, the election form must be received in OPM before final adjudication of the individual's application for annuity or supplemental annuity. In the absence of a valid election, OPM shall deem the insured to have filed a valid election under paragraph (c)(2) of this section.

(c) An individual who makes an election under paragraph (b) of this section shall select one of the following options:

(1) Termination of the insurance, in which case the individual's insurance shall stop upon conversion to an individual policy as provided under § 870.501, or, if the individual does not convert to an individual policy, at the end of the month in which OPM receives the election;

(2) Continuation or reinstatement of life insurance coverage with a maximum reduction of 75 percent during retirement, and with premiums withheld from annuity, except as provided under § 870.401(g)(1) of this chapter. The amount of basic life insurance in force shall reduce by two percent a month effective at the beginning of the second month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later, until the maximum is reached;

(3) Continuation or reinstatement of life insurance coverage with a maximum reduction of 50 percent during retirement, and with continuous premiums withheld from annuity. The amount of basic life insurance in force shall reduce by one percent a month effective at the beginning of the second month after the date of insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later, until the maximum is reached;

(4) Continuation or reinstatement of basic life insurance coverage with no reduction after age 65, and with continuous premiums withheld from annuity.

An insured individual may cancel an election under paragraph (c)(3) or (c)(4) of this section at any time. Upon cancellation the amount of basic life insurance will automatically revert, effective at the end of the month in which the request to cancel is received in OPM, to the amount that would have been in force had the individual originally elected coverage under paragraph (c)(2) of this section, unless a waiver of insurance coverage is filed by the insured, in which case the coverage stops without a 31-day extension of coverage or right of conversion, effective at the end of the month in which the waiver is received in OPM. An election under paragraph (c)(3) or (c)(4) of this section is automatically canceled effective at the end of the month in which it is determined that annuity payments are insufficient to cover the deductions required by the election.

(d) An immediate annuity is one which begins to accrue no later than one month after the date the insurance would otherwise stop.

(e) If the insured's annuity is terminated under any applicable law or regulation, his/her basic life insurance as an annuitant stops on the date of termination of annuity.

(f)(1) If an insured annuitant is appointed to a position in which he/she is not excluded from insurance by law or regulation, the amount of his/her basic life insurance as an annuitant, and any annuity withholdings applicable thereto, are suspended on the day preceding the first day in a pay status under the appointment unless he/she waives all insurance coverage. The benefit payable upon the death of a reemployed annuitant who has basic insurance in force as an employee shall not be less than the benefit which would have been payable had the person not been reemployed.

(2) Except as provided in paragraph (g) of this section, the basic insurance acquired as an employee stops, with no 31-day extension of coverage or right of conversion, on the date reemployment terminates and any suspended basic life insurance, and any annuity withholdings applicable thereto, are reinstated on the day following termination of the reemployment.

(g) Basic life insurance acquired during reemployment may be continued after termination of the reemployment if:

(1) The annuitant qualifies for a supplemental annuity or acquires a new retirement right,

(2) He/she has had basic insurance as an employee for at least five years of service immediately preceding separation from reemployment or for the full period(s) during which such coverage was available to him/her, whichever is less, and

(3) He/she does not convert to nongroup insurance when his/her basic insurance as an employee would otherwise terminate.

If the basic life insurance acquired during reemployment is so continued, any suspended basic life insurance stops with no 31-day extension of coverage or right to convert.

§ 870.602 Amount of life insurance.

The amount of an annuitant's basic life insurance is his/her BIA at the date insurance would otherwise have stopped because of his/her separation from service or completion of 12 months of nonpay status, less the reductions, if any, applicable under § 870.601(c). For the purpose of the payment of benefits upon the death of an insured annuitant under age 45, effective October 1, 1981, the BIA shall be multiplied by the age factor under § 870.301(b) corresponding to the insured's age on the date of death, provided that his/her basic insurance as an employee terminated on or after October 10, 1980.

§ 870.603 Reinstatement of life insurance.

(a) An annuitant whose disability annuity was terminated because of restoration to earning capacity or recovery from disability and whose disability annuity is restored under section 8337(e) of title 5, United States Code, after December 31, 1983, may elect to resume basic life insurance held immediately before his or her disability annuity was terminated. The election must be received by OPM within 60 days after OPM mails a notice of insurance eligibility and election form.

(b) The basic life insurance of an annuitant who meets the requirements of paragraph (a) of this section is effective on the first day of the month after the date OPM receives the election form. Any annuity withholdings applicable thereto are also reinstated on the first day of the month after the date OPM receives the election form.

(c) The amount of basic life insurance reinstated under paragraph (a) of this section is the amount that would have been in force had the individual's annuity not been terminated.

[50 FR 42005, Oct. 17, 1985]

Subpart G—Employees' Compensation

§ 870.701 Eligibility for life insurance.

(a) A compensationer's basic life insurance shall be continued or reinstated if he/she:

(1) Has been insured for the five years of service immediately preceding the date of entitlement to compensation, or for the full period(s) of service during which he/she was entitled to be insured, and

(2) Has not exercised the right to convert as described in § 870.501(e). If, after an individual has exercised the conversion right, it is determined that he/she is eligible to continue the group coverage as a compensationer and the group enrollment is reinstated in accordance with this subpart, the conversion policy shall be voided and the premiums already paid on such policy shall be refunded to the insured.

(b) A compensationer who meets the requirements under paragraph (a) of this section for continuation or reinstatement of life insurance shall execute a written election on a form furnished by OPM at the time entitlement to continuation or reinstatement of the insurance arises. To be considered valid, the election form must be received in OPM before OPM has finally approved an individual's request to continue life insurance as a compensationer. In the absence of a valid election, OPM shall deem the insured to have filed a valid election under paragraph (c)(2) of this section.

(c) An individual who makes an election under paragraph (b) of this section shall select one of the following options:

(1) Termination of the insurance, in which case the individual's insurance shall stop upon conversion to an individual policy as provided under § 870.501, or, if the individual does not convert to an individual policy, at the end of the month in which OPM or the employing office receives the election;

(2) Continuation or reinstatement of life insurance coverage with a maximum reduction of 75 percent after age 65 and with premiums withheld from compensation, except as provided under § 870.401(g)(1) of this chapter. The amount of basic life insurance in force shall reduce by two percent a month effective at the beginning of the second calendar month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later, until the maximum is reached;

(3) Continuation or reinstatement of basic life insurance coverage with a maximum reduction of 50 percent after age 65, and with continuous premiums withheld from compensation. The amount of basic life insurance in force shall reduce by one percent a month, effective at the beginning of the second calendar month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later, until the maximum is reached;

(4) Continuation or reinstatement of basic life insurance coverage with no reduction after age 65, and with continuous premiums withheld from compensation.

An insured individual may cancel an election under paragraphs (c)(3) or (c)(4) of this section at any time. Upon cancellation, the amount of basic life insurance will automatically revert, effective at the end of the month in which the request to cancel is received in OPM, to the amount that would have been in force had the individual originally elected continued coverage under paragraph (c)(2) of this section, unless a waiver of insurance coverage is filed by the insured, in which case the insurance stops without a 31-day extension of coverage or right of conversion, effective at the end of the month in which the waiver is received in OPM. An election under paragraph (c)(3) or (c)(4) of this section is automatically canceled effective at the end of the pay period in which it is determined that periodic compensation payments are insufficient to cover the deductions required by the election.

(d) Basic life insurance which is continued as provided under this section during receipt of compensation shall stop with no 31-day extension of coverage and no right of conversion, upon termination of compensation under subchapter I of chapter 81 of title 5, United States Code, or upon a finding by the Department of Labor that the insured is able to return to duty.

§ 870.702 Amount of life insurance.

The amount of basic life insurance of a compensationer whose insurance is continued while he/she is receiving compensation is his/her BIA at the date insurance would otherwise have stopped because of his/her separation from service or completion of 12 months of nonpay status, less the reductions, if any, applicable under § 870.701(c). For the purpose of the payment of benefits upon the death of an insured individual under age 45, effective October 1, 1981, the BIA shall be mulitplied by the age factor under § 870.301(b) corresponding to the insured's age on the date of death, provided that his/her basic insurance as an employee terminated on or after October 10, 1980.

Subpart H—Assignments

§ 870.801 Assignments.

Part 874 of this chapter, Assignment of Life Insurance, describes the right of a judge to assign all incidents of ownership in insurance coverage under this chapter (except family optional insurance under Part 873) to another person, the effects of such assignment, procedures for making an assignment, and related matters.

[50 FR 8096, Feb. 28, 1985]

Subpart I—Order of Precedence and Designation of Beneficiary

§ 870.901 Designation of beneficiary.

(a) A designation of beneficiary shall be in writing, signed, and witnessed, and received in the employing office (or in OPM, in the case of (1) an annuitant or (2) a compensationer whose basic life insurance is continued) before the death of the insured.

(b) A change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by this part, shall not have any force or effect.

(c) A witness to a designation of beneficiary is ineligible to receive payment as a beneficiary.

(d) Any person, firm, corporation, or legal entity (except an agency of the Federal or District of Columbia governments) may be named as beneficiary.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted.

(f) A designation of beneficiary is automatically canceled (1) on the day the employee transfers (except by mass transfer) to another agency, or (2) 31 days after the employee stops being insured.

(g) If an insured person provides in a valid designation of beneficiary that a designated beneficiary shall be entitled to the proceeds of the insurance only if the beneficiary survives him/her for a period of time (not more than 30 days) as specified by the designator, no right to the insurance shall vest as to such beneficiary during that period. In the event such beneficiary does not survive the specified period, payment of the proceeds of the insurance will be made as if the beneficiary had predeceased the insured.

PART 871—STANDARD OPTIONAL LIFE INSURANCE

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AUTHORITY: 5 U.S.C. 8716.

SOURCE: 49 FR 3039, Jan. 25, 1984, unless otherwise noted.

Subpart A—Administration and General Provisions

§ 871.101 Actions on the policy.

Optional life and accidental death and dismemberment benefits (referred to in this part as "standard optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States, shall be brought against the insurance company.

§ 871.102 Payment of benefits; designations of beneficiary.

Standard optional insurance in force on a person at the date of his/her death shall be paid, on receipt of a valid claim, in the same order of precedence and under the same conditions as are applicable to basic insurance. A designation of beneficiary for basic insurance is also a designation of beneficiary for standard optional insurance unless the insured person specifies otherwise in his/her designation.

§ 871.103 Correction of an error, mistake, or omission.

OPM's Associate Director for Compensation or his/her designee may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director or his/her designee that it would be against equity and good conscience not to do so.

§ 871.104 Definitions.

The terms defined under § 870.103 of this chapter have the same meanings in this part.

[50 FR 8096, Feb. 28, 1985]

Subpart B—Coverage

§ 871.201 Eligibility.

Each employee who is insured for basic insurance and for whom an uncanceled declination of standard optional insurance is not in effect is eligible to elect the standard optional insurance, if his/her periodic pay, after all other deductions, is sufficient to cover its full cost.

§ 871.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) this section, each employee shall, on the form entitled Life Insurance Election, elect or decline the standard optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect.

(b) On a determination by an employing office, within six months after an employee becomes eligible, that he/she was unable, for cause beyond his/her control, to elect the standard optional insurance within the prescribed time limit, the employee shall elect or decline the standard optional insurance within 31 days after he/she is advised of that determination. Standard optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in pay status or retired or in receipt of compensation and under age 65.

(c) A person who does not file with his/her employing office an election of standard optional insurance on the Life Insurance Election form does not have the standard optional insurance.

§ 871.203 Effective date of insurance.

(a) The effective date of an election of standard optional insurance is the first day an employee actually enters on duty in a pay status on or after the day the election is received in his/her employing office.

(b) An election of standard optional insurance remains in effect until canceled as provided in § 871.204. For an employee whose standard optional insurance has stopped for a reason other than a declination or waiver, standard optional insurance is reinstated on the first day he/she actually enters on duty in a pay status in a position in which he/she again becomes eligible.

(c) An open enrollment election of standard optional insurance filed during the period from June 1 through July 1, 1985, is effective on the first day of the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for at least 32 hours. A part-time employee will need to have been in a pay and duty status for one-half of the regularly scheduled tour of duty indicated on his or her current Standard Form 50 for newly-elected coverage to become effective. An employee who has no regularly-scheduled tour of duty or who is employed on an intermittent basis will have to have been in a pay and duty status for one-half of the hours customarily worked before newly-elected coverage can become effective. For the purpose of this subsection, employing offices can determine the number of hours customarily worked by averaging the number of hours worked in the calendar year quarter ending June 30, 1985.

[49 FR 3039, Jan. 25, 1984, as amended at 50 FR 26689, June 28, 1985]

§ 871.204 Declination.

(a) An insured person may cancel his/her standard optional insurance at any time by filing a declination of standard optional insurance or a waiver of basic insurance coverage. An employee files with the employing office. An annuitant files with OPM or other office that administers his/her retirement system. If still employed, a compensationer files with the employing office, and, if not still employed, with OWCP.

(b) A cancellation of standard optional insurance becomes effective and standard optional insurance stops at the end of the pay period in which the declination or waiver is properly filed.

(c) A declination of standard optional insurance remains in effect until is canceled as provided in § 871.205.

(d) For the purpose of having standard optional insurance as an employee, an election of insurance under this part filed on or before February 28, 1981, is deemed to have been canceled effective at the end of the pay period which includes March 31, 1981, unless the employee does not actually enter on duty in pay status during the first pay period which begins on or after April 1, 1981, in which case the election is deemed to have been canceled on the first day after the end of the pay period that the employee actually enters on duty in pay status. In order to retain or obtain standard optional insurance as an employee after the date of such declination an employee must affirmatively elect the coverage by filing the Life Insurance Election form with his/her employing office, subject to the provisions of § 871.204 Declination.

§ 871.205 Cancellation of declination.

(a) An employee who has declined the standard optional insurance may elect it if:

(1) He/she is under age 50;

(2) At least one year has elapsed since the effective date of his/her last declination or waiver; and

(3) He/she furnishes satisfactory evidence of insurability.

(b) The effective date of an election under paragraph (a) of this section is the first day the employee actually enters on duty in pay status, on or after the day his/her employing office receives the election following approval of his/her Request for Insurance by the Office of Federal Employees' Group Life Insurance established by the insurance company. The approval is revoked automatically and the standard optional insurance does not become effective if the employee fails to submit his/her election or meet the pay and duty status requirement within 31 days following the date of the approval.

(c) Notwithstanding paragraphs (a) and (b) of this section, the declination of standard optional insurance coverage by an employee who is or becomes a member of the Postal Career Executive Service on or after June 2, 1979, is automatically and permanently canceled. He/she is insured for standard optional insurance on the first day he/she enters on duty in a pay status on or after June 2, 1979.

(d) Declinations of standard optional insurance filed on or before February 28, 1981, are automatically canceled effective on the first day an employee whose declination is so canceled actually enters on duty in pay status on or after April 1, 1981. The standard optional insurance is effective on the date of cancellation of the declination, provided that the employee has filed an affirmative election of standard optional insurance on the form entitled Life Insurance Election during the open enrollment period from March 1, 1981 through March 31, 1981. An employee whose pre-March 1981 declination is so canceled and who does not file the form with his/her employing office during the period from March 1, 1981 through March 31, 1981, shall be deemed to have declined standard optional insurance on March 31, 1981. However, an employee who fails to file the form during that period due to cause beyond his/her control shall be allowed to enroll belatedly under the conditions prescribed under § 871.202(b).

(e) An annuitant or compensationer is not eligible to cancel a declination under this section.

(f)(1) A previous declination is automatically canceled at time of reinstatement on or after April 1, 1981, if an employee has been separated from service for at least 180 days. If no new declination is filed, standard optional insurance coverage is effective on the date the employee actually enters on duty in a pay status in a position wherein he/she is not excluded from insurance by law or regulation, provided that the employee has filed an affirmative election of standard optional insurance on the form entitled Life Insurance Election. An employee whose declination is so canceled and who does not file the form with his/her employing office within 31 days after reinstatement shall be deemed to have declined standard optional insurance, except that an employee who fails to file the form during that period due to cause beyond his/her control shall be allowed to enroll belatedly under the conditions prescribed under § 871.202(b).

(2) An employee who returned to Federal service between April 1, 1981, and December 8, 1983, after a 180-day break in service may elect standard optional insurance upon application to his or her employing office before March 7, 1984.

(g)(1) An open enrollment period will be held from June 1 through July 1, 1985, during which time employees otherwise eligible for coverage may cancel their existing declinations of coverage by affirmatively electing to be insured on a form designated by OPM.

(2) An employing office may make a determination, within 6 months after the June 1 through July 1, 1985 open enrollment period, that an employee was unable, for cause beyond his or her control, to cancel his or her then existing declination of coverage by affirmatively electing to be insured during the 1985 open enrollment period. The employee shall be permitted to submit an affirmative election of coverage within 31 days after he or she is advised of that determination.

Standard optional insurance coverage in that case is retroactive to the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for a sufficient length of time, as specified in § 871.203(c) to acquire coverage. Failure on the part of the employee to file an election within the 31 days prescribed in this paragraph shall be deemed a declination of standard optional insurance.

[49 FR 3039, Jan. 25, 1984, as amended at 50 FR 26689, June 28, 1985]

§ 871.206 Reconsideration.

An individual may request OPM to reconsider an agency decision or an initial decision of OPM denying standard optional insurance coverage under the procedure established in § 870.205 of this chapter.

Subpart C—Amount of Insurance

§ 871.301 Amount of employee's insurance.

The amount of an employee's standard optional insurance is $10,000, except that an employee whose annual rate of pay (as defined in § 870.302 of this chapter) exceeds the sum of (a) the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of title 5, United States Code, plus (b) $10,000, may elect standard optional insurance in an amount which, when added to his/her basic insurance amount, does not exceed his/her annual rate of pay, rounded, if not an even thousand, to the next higher $1,000.

Subpart D—Withholdings

§ 871.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay status the employing agency shall withhold the full cost of his/her standard optional insurance from his/her pay.

(b)(1) Subject to the provisions of § 871.604, the full cost of standard optional insurance shall be withheld from the annuity of an annuitant or from the compensation of a compensationer, except that there is no withholding for an annuitant or compensationer for coverage after the end of the calendar month in which he/she becomes 65 years of age.

(2) Withholdings are not required for the period between the end of the pay period in which an individual separates from service and the beginning of the annuity or compensation payments, if later.

(c) The biweekly full cost per $10,000 of additional optional insurance (and for an annuitant or compensationer, of standard optional life insurance), until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35	$0.55
For persons ages 35 through 39	0.70
For persons ages 40 through 44	1.00
For persons ages 45 through 49	1.60
For persons ages 50 through 54	2.70
For persons ages 55 through 59	6.00
For persons age 60 or over	7.50

The amount withheld from pay, annuity or compensation paid on other than a biweekly period shall be determined at a proportionate rate, adjusted to the nearest cent.

(d) For the purposes of this section, a person is deemed to attain 35, 40, 45, 50, 55, or 60 years of age on the first day of his/her pay period beginning on or after January 1 of the year following the one in which his/her corresponding birthday occurs.

(e) The amount withheld from the pay of an insured person whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate for his/her age group to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

(f) Notwithstanding the preceding paragraphs of this section, the United States Postal Service contributes the full cost of standard optional insurance, that is, the amount otherwise to be withheld under the preceding paragraphs of this section, for each period in which a member of the Postal Career Executive Service is insured.

(g) If an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8714a of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. A determination whether to waive collection of the overpayment of pay shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G, unless the agency involved is excluded from application of 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

[49 FR 3039, Jan. 24, 1984, as amended at 49 FR 19287, May 7, 1984]

Subpart E—Termination and Conversion

§ 871.501 Termination and conversion of insurance.

(a) The standard optional insurance of an insured person stops when his/her basic insurance stops as provided in § 870.501 of this chapter, subject to a 31-day extension of standard optional life insurance coverage.

(b) If, because of a declination or waiver, an insured person has not had the standard optional insurance during either:

(1) The full period(s) of service during which it was available to him/her; or

(2) The five years of service immediately preceding the date on which that coverage stops (for annuitants) or the date of entitlement to compensation (for compensationers), the standard optional insurance stops, subject to a 31-day extension of standard optional life insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of § 870.601 (during retirement) or § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under § 870.601(b) or §870.701(b) of this chapter (for basic life insurance during receipt of annuity or compensation), he/she elects no basic life insurance (as provided under §§ 870.601(c)(1) or 870.701(c)(1) of this chapter), the standard optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(d) The standard optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation, or annuity, after all other deductions, is insufficient to cover the full cost of the standard optional insurance.

(e)(1) After termination of group coverage for any reason other than voluntary cancellation, an employee may, upon application and without medical examination, convert all or any part of his/her standard optional insurance to an individual policy. The rates of the individual policy are the rates applicable to the employee's attained age and class of risk. An employee is eligible to convert the policy only if he/she does not return, within 3 calendar days from the terminating event, to a position allowing coverage under the group plan.

(2) The employing agency must notify the employee of the loss of coverage and the right to convert to an individual policy either prior to or immediately following the event causing the loss of coverage.

(3) The employee's request for conversion information must be submitted to the Office of Federal Employees' Group Life Insurance and postmarked within 31 days following the date of the terminating event or within 31 days of the date the employee received notice of loss of the group coverage and right to convert, whichever is later.

(4) When an agency fails to provide the notification described in paragraph (e)(2) of this section, or the employee fails for other reasons beyond his/her control to request conversion as described in paragraph (e)(3) of this section, he/she may request conversion of an individual policy by writing to the Office of Federal Employees' Group Life Insurance. Such a request must be filed within six months after

an employee becomes eligible to convert the standard optional insurance. That employee must show that he/she was not notified of the loss of coverage and the right to convert, and was not otherwise aware of it, or that he/she was unable, for cause beyond his/her control, to convert the standard optional insurance. The Office of Federal Employees' Group Life Insurance will determine if the employee is eligible to convert, and when the determination is affirmative, the employee may convert within 31 days of that determination.

(5) When an employee converts his/her standard optional insurance anytime after the group coverage has ended, the individual plan coverage is retroactive to the day following the day the group coverage ended. The employee must pay the premiums due for the retroactive period.

(6) An employee who fails to exercise his/her right to convert to an individual policy within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, which-ever is later, is deemed as having declined coverage unless OFEGLI determines the failure was for cause beyond his/her control as described in paragraph (e)(4) of this section.

(f) The 31-day extension of coverage provided under this subpart cannot be extended beyond 31 days, nor is it contingent upon timely issuance of notice of the right of conversion to an individual policy.

[49 FR 3039, Jan. 25, 1984, as amended at 50 FR 7904, Feb. 27, 1985]

Subpart F—Annuitants and Compensationers

§ 871.601 Amount of insurance.

The amount of standard optional life insurance continued during receipt of annuity or compensation reduces by 2 percent a month, effective at the beginning of the second calendar month after the date the insurance would otherwise have stopped or the insured's 65th birthday, whichever is later, until a maximum reduction of 75 percent is achieved.

[50 FR 8096, Feb. 28, 1985]

§ 871.602 Termination of annuity or compensation.

If the annuity or compensation paid to an insured person is terminated or if the Department of Labor finds that an insured person receiving compensation is able to return to duty, standard optional life insurance held as an annuitant or compensationer stops, with no 31-day extension of coverage or right of conversion, on the date of that termination or finding.

§ 871.603 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation is waived or suspended, standard optional life insurance continues. When payment of the annuity or compensation is resumed, the paying official shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemploying office shall withhold the full cost of the insurance during each pay period of reemployment.

§ 871.604 Reemployed annuitants.

(a)(1) An annuitant appointed to a position in which he/she is not excluded from basic insurance by law or regulation is eligible for standard optional insurance as an employee, unless he/she has on file an uncanceled waiver of basic insurance or declination of standard optional insurance. If he/she has standard optional life insurance as an annuitant, that insurance (and any applicable annuity withholdings) is suspended on the day preceding his/her first day in a pay status under the appointment and, unless he/she files a declination of standard optional insurance (or waiver of basic insurance), he/she acquires standard optional insurance as an employee.

(2) Except as provided in paragraph (b) of this section, the standard optional insurance acquired as an employee stops, with no 31-day extension or right of conversion, on the date reemployment terminates and the amount of suspended standard option-

al life insurance which remains in force after applicable monthly reductions after age 65 (and corresponding annuity withholdings, if any) is reinstated on the day following termination of the reemployment.

(b) Standard optional life insurance acquired during reemployment may be continued after termination of the reemployment if the annuitant:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic life insurance under paragraph (c)(2), (c)(3), or (c)(4) of § 870.601 of this chapter, and

(3) Has had standard optional insurance in force for the five years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less.

If the standard optional life insurance acquired during reemployment is so continued, any suspended standard optional life insurance stops with no 31-day extension of coverage or right of conversion.

§ 871.605 Restored disability annuitants.

(a) An annuitant whose disability annuity is terminated because of restoration to earning capacity or recovery from disability and whose disability annuity is restored under section 8337(e) of title 5, United States Code, after December 31, 1983, may elect to resume the standard optional insurance held immediately before his or her disability annuity was terminated if: (1) He or she has also made an election under § 870.603 of this chapter; and (2) The election is received by OPM within 60 days after OPM mails the notice of insurance eligibility and election form.

(b) The standard optional insurance of an annuitant who meets the requirements of paragraph (a) of this section is effective on the first day of the month after the date OPM receives the election form. Any annuity withholding applicable thereto are also reinstated on the first day of the month after the date OPM receives the election form.

(c) The amount of standard optional insurance reinstated under paragraph (a) of this section is the amount that would have been in force had the individual's annuity not been terminated.

[50 FR 42006, Oct. 17, 1985]

Subpart G—Assignments

§ 871.701 Assignment.

Part 874 of this chapter, Assignment of Life Insurance, describes the right of a judge to assign all incidents of ownership in insurance coverage under this chapter (except family optional insurance under Part 873) to another person, the effects of such assignment, procedures for making an assignment, and related matters.

[50 FR 8096, Feb. 28, 1985]

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

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Subpart G—Assignments

872.701 Assignments.

AUTHORITY: 5 U.S.C. 8716.

SOURCE: 49 FR 3042, Jan. 25, 1984, unless otherwise noted.

Subpart A—Administration and General Provisions

§ 872.101 Actions on the policy.

Optional life insurance (referred to in this part as "additional optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, U.S.C., to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States, shall be brought against the insurance company.

§ 872.102 Payment of benefits; designations of beneficiary.

Additional optional insurance in force on a person at the date of his/her death shall be paid, on receipt of a valid claim, in the same order of precedence and under the same conditions as are applicable to basic insurance. A designation of beneficiary for basic insurance is also a designation of beneficiary for additional optional insurance unless the insured person specifes otherwise in his/her designation.

§ 872.103 Correction of an error, mistake, or omission.

OPM's Associate Director for Compensation or his/her designee may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director or his/her designee that it would be against equity and good conscience not to do so.

§ 872.104 Definitions.

The terms defined under § 870.103 of this chapter have the same meanings in this part.

Subpart B—Coverage

§ 872.201 Eligibility.

Each employee who is insured for basic insurance and for whom an uncanceled declination of additional optional insurance is not in effect is eligible to elect the additional optional insurance, if his/her periodic pay, after all other deductions, is sufficient to cover its full cost.

§ 872.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline the additional optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect. The 31-day time limit begins to run on the first day after February 28, 1981, on which an individual meets the definition of an employee.

(b) On a determination by an employing office, within six months after an employee becomes eligible, that he/she was unable, for cause beyond his/her control to elect the additional optional insurance within the prescribed time limit, the employee shall elect or decline the additional optional insurance within 31 days after he/she is advised of the determination. Additional optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired or in receipt of compensation and under age 65.

(c) A person who does not file with his/her employing office an election of additional optional insurance on the Life Insurance Election form does not have the additional optional insurance.

§ 872.203 Effective date of insurance.

(a) The effective date of an election of additional optional insurance is the first day on or after April 1, 1981, that an employee actually enters on duty in a pay status on or after the day the election is received in his/her employing office.

(b) An election of additional optional insurance remains in effect until canceled as provided in § 872.204. For an employee whose additional optional insurance has stopped for a reason other than a declination or waiver, additional optional insurance is reinstated on the first day he/she actually enters on duty in a pay status in a position in which he/she again becomes eligible.

(c) An open enrollment election of additional optional insurance filed during the period from June 1 through July 1, 1985, is effective on the first day of the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for at least 32 hours. A part-time employee will need to have been in a pay and duty status for one-half of the regularly-scheduled tour of duty indicated on his or her current Standard Form 50 for newly-elected coverage to become effective. An employee who has no regularly-scheduled tour of duty or who is employed on an intermittent basis will have to have been in a pay and duty status for one-half of the hours customarily worked before newly-elected coverage can become effective. For the purpose of this subsection, employing offices can determine the number of hours customarily worked by averaging the number of hours worked in the calendar year quarter ending June 30, 1985.

[49 FR 3042, Jan. 25, 1984, as amended at 50 FR 26689, June 28, 1985]

§ 872.204 Declination.

(a) An insured person may cancel entirely or reduce the number of multiples of his/her additional optional insurance at any time by filing a declination or request to reduce the number of multiples of additional optional insurance or a waiver of basic insurance coverage. An employee files with the employing office. An annuitant files with OPM or other office that administers his/her retirement system. If still employed, a compensationer files with the employing office, and, if not still employed, with OWCP.

(b) A cancellation of additional optional insurance becomes effective and additional optional insurance stops at the end of the pay period in which the declination or waiver is properly filed. A reduction in the number of an employee's additional optional insurance multiples is effective at the end of the pay period in which the Life Insurance Election form is received in his/her employing office. A reduction in the number of a retired employee's or compensationer's additional optional insurance multiples is effective at the end of the pay period in which the request to reduce coverage is properly filed.

(c) A declination or reduction in multiples of additional optional insurance remains in effect until it is canceled as provided in § 872.205.

§ 872.205 Cancellation of declination.

(a)(1) An employee who has declined the additional optional insurance may elect it if:

(i) He/she is under age 50;

(ii) At least one year has elapsed since the effective date of his/her last declination or waiver; and

(iii) He/she furnishes satisfactory evidence of insurability.

(2) An employee who has declined additional optional insurance may elect it upon his/her marriage or the acquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and Subpart G of Part 873 of this chapter. In order to be valid, the election must be filed with the employing office on the Life Insurance Election form before the employee's 36th birthday and no more than 60 days following the date of the event which permits the election. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, or if the individual separates from covered service prior to completion of the 60-day time

limit. This extension of the time limit may not exceed the 31-day time limit for electing insurance following employment in a covered position. The number of multiples which an employee may obtain upon acquisition of a spouse or child is limited to the number of family members (spouse and/or children) acquired with the event which permits the employee to elect additional optional insurance under this paragraph.

(3) An employee who has in force additional optional insurance of at least one multiple of annual pay but less than five multiples of annual pay may increase the number of multiples if:

(i) He/she is under age 50;

(ii) At least 1 year has elapsed since the effective date of his/her last election of less than 5 multiples (including a reduction in the number of multiples); and

(iii) He/she furnishes satisfactory evidence of insurability. The requirement that at least one year elapse since the effective date of the last election does not apply when an employee elected less than five multiples because of the limitation on the number of multiples which may be elected under paragraph (a)(2) or (a)(4) of this section.

(4) An employee who has in force additional optional insurance of at least one multiple of annual pay but less than five multiples of annual pay may elect to increase the number of multiples upon his/her marriage or the acquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and Subpart G of Part 873 of this chapter. In order to be valid, the election to increase the number of multiples must be filed with the employing office on the Life Insurance Election form before the employee's 50th birthday and no more than 60 days following the date of the event which permits the increase. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, or if the individual separates from covered service prior to completion of the 60-day time limit. This extension of the time limit may not exceed the 31-day time limit for electing insurance following employment in a covered position. The number of multiples which an employee may add upon acquisition of a spouse or child is limited to the number of family members (spouse and/or children) acquired with the event which permits the employee to increase multiples.

(5)(i) A previous declination is automatically canceled at time of reinstatement on or after April 1, 1981, if an employee has been separated from service for at least 180 days. If no new declination is filed, additional optional insurance coverage is effective on the date the employee actually enters on duty in a pay status in a position wherein he/she is not excluded from insurance by law or regulation, provided that the employee has filed an affirmative election of additional optional insurance on the Life Insurance Election form. An employee whose declination is so canceled and who does not file the form with his/her employing office within 31 days after reinstatement shall be deemed to have declined additional optional insurance, except that an employee who fails to file the form during that period due to cause beyond his/her control shall be allowed to enroll belatedly under the conditions prescribed under § 872.202(b).

(ii) An employee who returned to Federal service between April 1, 1981, and December 8, 1983, after a 180-day break in service may elect additional optional insurance upon application to his or her employing office before March 7, 1984.

(b)(1) The effective date of the additional optional insurance or of an increased number of multiples of additional optional insurance elected under paragraph (a)(1) or (a)(3) of this section is the first day the employee actually enters on duty in a pay status, on or after the day his/her election is received in his/her employing office following the approval of his/her Request for Insurance by the Office of Federal Employees' Group Life Insurance established by the insurance company. This approval is revoked automatically and the additional optional insurance does not become effective if the employee fails to submit his/her election or meet the pay and duty status requirement within 31 days following the date of the approval.

(2) The effective date of an election under paragraph (a)(2) or (a)(4) of this section is the first day the employee actually enters on duty in pay status, on or after the day his/her election is received in the employing office and the basic insurance is in force.

(c) An annuitant or compensationer is not eligible to cancel a declination under this section, nor to increase multiples of additional optional insurance.

(d)(1) An open enrollment period will be held from June 1 through July 1, 1985, during which time employees otherwise eligible for coverage may cancel their existing declinations of coverage by affirmatively electing to be insured on a form designated by OPM.

(2) An employing office may make a determination, within 6 months after the June 1 through July 1, 1985 open enrollment period, that an employee was unable, for cause beyond his or her control, to cancel his or her then existing declination of coverage by affirmatively electing to be insured during the 1985 open enrollment period. The employee shall be permitted to submit an affirmative election of coverage within 31 days after he or she is advised of that determination. Additional optional insurance coverage in that case is retroactive to the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for a sufficient length of time, as specified in § 872.203(c) to acquire coverage. Failure on the part of the employee to file within the 31 days prescribed in this paragraph shall be deemed a declination of additional optional insurance.

[49 FR 3042, Jan. 25, 1984, as amended at 50 FR 26689, June 28, 1985]

§ 872.206 Reconsideration.

An individual may request OPM to reconsider an agency decision or an initial decision of OPM denying additional optional insurance coverage under the procedure established in § 870.205 of this chapter.

Subpart C—Amount of Insurance

§ 872.301 Amount of employee's insurance.

An eligible employee may elect additional optional insurance of 1, 2, 3, 4, or 5 multiples of his/her annual pay. For this purpose, each multiple is equal to the lowest multiple of $1,000 which is not less than the current rate of the employee's annual pay as determined under § 870.302 of this chapter. A multiple shall not exceed the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of title 5, United States Code, rounded to the next higher multiple of $1,000.

Subpart D—Withholdings

§ 872.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay status, the employing agency shall withhold the full cost of additional optional insurance from his/her pay.

(b)(1) Subject to the provisions of § 872.604, the full cost of additional optional insurance shall be withheld from the annuity of an annuitant or from the compensation of a compensationer, except that there is no withholding for an annuitant or compensationer for coverage after the end of the calendar month in which he/she becomes 65 years of age.

(2) Withholdings are not required for the period between the end of the pay period in which an individual separates from service and the beginning of the annuity or compensation payments, if later.

(c) The biweekly full cost per $1,000 of additional optional insurance in force, until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35	$0.04
For persons ages 35 through 39	0.05
For persons ages 40 through 44	0.08
For persons ages 45 through 49	0.16
For persons ages 50 through 54	0.27
For persons ages 55 through 59	0.60
For persons age 60 or over	0.95

The amount withheld from pay, annuity or compensation paid on other than a biweekly period shall be determined at a proportionate rate, adjusted to the nearest one-tenth of one cent.

(d) For the purposes of this section, a person is deemed to attain 35, 40, 45, 50, 55, or 60 years of age on the first day of his/her pay period beginning on or after January 1 of the year following the one in which his/her corresponding birthday occurs.

(e) The amount withheld from the pay of an insured person whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate for his/her age group to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

(f) The amount withheld from the pay of an insured employee whose amount of insurance changes during a pay period is based on the last amount of insurance in force during the pay period.

(g) If an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8714b of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. A determination whether to waive collection of the overpayment of pay shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G, unless the agency involved is excluded from application of 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

[49 FR 3042, Jan. 25, 1984, as amended at 49 FR 19287, May 7, 1984]

Subpart E—Termination and Conversion

§ 872.501 Termination and conversion of insurance.

(a) The additional optional insurance of an insured person stops when his/her basic insurance stops as provided in § 870.501 of this chapter, subject to a 31-day extension of additional optional insurance coverage.

(b) If, because of a declination or waiver, an insured employee has not had additional optional insurance during either:

(1) The full period(s) of service during which it was available to him/her; or

(2) The five years of service immediately preceding the date on which that coverage stops (for annuitants) or the date of entitlement to compensation (for compensationers), the additional optional insurance stops, subject to a 31-day extension of additional optional insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of § 870.601 (during retirement) or § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter (for basic life insurance during receipt of annuity or compensation), he/she elects no basic life insurance (as provided under §§ 870.601(c)(1) or 870.701(c)(1) of this chapter), the additional optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(d) The additional optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation or annuity, after all other deductions, is insufficient to cover the full cost of the additional optional insurance.

(e)(1) After termination of group coverage for any reason other than voluntary cancellation, an employee may, upon application and without medical examination, convert all or any part of his/her additional optional insurance to an individual policy. The rates of the individual policy are the rates applicable to the employee's attained age and class of risk. An employee is eligible to convert the policy only if he/she does not return, within 3 calendar days from the terminating event, to a position allowing coverage under the group plan.

(2) The employing agency must notify the employee of the loss of group coverage and the right to convert to an individual policy either prior to or immediately following the event causing the loss of coverage.

(3) The employee's request for conversion information must be submitted to the Office of Federal Employees' Group Life Insurance and postmarked within 31 days following the date of the terminating event or within 31 days of the date the employee received notice of loss of group coverage and right to convert, whichever is later.

(4) When an agency fails to provide the notification described in paragraph (e)(2) of this section, or the employee fails for other reasons beyond his/her control to request conversion as described in paragraph (e)(3) of this section, he/she may request conversion to an individual policy by writing to the Office of Federal Employees' Group Life Insurance. Such a request must be filed within six months after an employee becomes eligible to convert the additional optional insurance. The employee must show that he/she was not notified of the loss of coverage and the right to convert, and was not otherwise aware of it, or that he/she was unable, for cause beyond his/her control, to convert the additional optional insurance. The Office of Federal Employee's Group Life Insurance will determine if the employee is eligible to convert, and when the determination is affirmative, the employee may convert within 31 days of that determination.

(5) When an employee converts his/her additional optional insurance anytime after the group coverage has ended, the individual plan coverage is retroactive to the day following the day the group coverage ended. The employee must pay the premiums due for the retroactive period.

(6) An employee who fails to exercise his/her right to convert to an individual policy within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, whichever is later, is deemed as having declined coverage unless OFEGLI determines the failure was for cause beyond his/her control as described in paragraph (e)(4) of this section.

(f) The 31-day extension of coverage provided under this subpart cannot be extended beyond 31 days, nor is it contingent upon timely issuance of notice of the right of conversion to an individual policy.

[49 FR 3042, Jan. 25, 1984, as amended at 50 FR 7904, Feb. 27, 1985]

Subpart F—Annuitants and Compensationers

§ 872.601 Amount of insurance.

(a) Each multiple of additional optional insurance continued during receipt of annuity or compensation reduces by two percent a month effective at the beginning of the second calendar month after (1) the date the insurance would otherwise have stopped, or (2) the insured's 65th birthday, whichever is later. At 12:00 PM on the day preceding the 50th reduction the insurance stops, with no extension of coverage or right of conversion.

(b) The number of multiples of additional optional insurance which may be continued during receipt of annuity or compensation is the smallest number of multiples in force during the applicable period of service required for continuation of the additional optional insurance during receipt of annuity or compensation payments.

§ 872.602 Termination of annuity or compensation.

If the annuity or compensation paid to an insured person is terminated or if the Department of Labor finds that an insured person receiving compensation is able to return to duty, additional optional insurance held as an annuitant or compensationer stops, with no 31-day extension of coverage or right of conversion, on the date of that termination or finding.

§ 872.603 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation is waived or suspended, additional optional insurance continues. When payment of the annuity or compensation is resumed, the paying office shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemploying office shall withhold the full cost of the insurance during each pay period of reemployment.

§ 872.604 Reemployed annuitants.

(a)(1) An annuitant appointed to a position in which he/she is not excluded from basic insurance by law or regulation is eligible for additional optional insurance as an employee, unless he/she has on file an uncanceled waiver of basic insurance or declination of additional optional insurance. If he/she has additional optional insurance as an annuitant, that insurance (and any applicable annuity withholdings) continues as if the individual were not reemployed, unless (i) the person files with his/her employing office within 31 days following the date of reemployment an election of additional optional insurance on the Life Insurance Election form, in which case the additional optional insurance (and corresponding annuity withholdings) as an annuitant is suspended effective on the date that the additional optional insurance as an employee becomes effective, or (ii) the person files a waiver of basic insurance.

(2) Except as provided in paragraph (b) of this section, the additional optional insurance acquired as an employee stops, with no 31-day extension or right of conversion, on the date reemployment terminates and any suspended additional optional insurance which remains in force after applicable monthly reductions after age 65 (and corresponding annuity withholdings, if any) is reinstated on the day following termination of the reemployment.

(b) Additional optional insurance acquired during reemployment may be continued after termination of the reemployment if the annuitant:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3), or (c)(4) of § 870.601 of this chapter, and

(3) Has had additional optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less.

If the additional optional insurance acquired during reemployment is so continued, any suspended additional optional insurance stops with no 31-day extension of coverage or right of conversion.

§ 872.605 Restored disability annuitants.

(a) An annuitant whose disability annuity is terminated because of restoration to earning capacity or recovery from disability and whose disability annuity is restored under section 8337(e) of title 5, United States Code, after December 31, 1983, may elect to resume additional optional insurance held immediately before his or her disability annuity was terminated if: (1) He or she made an election under § 870.603 of this chapter and (2) the election is received by OPM within 60 days after OPM mails the notice of insurance eligibility and election form.

(b) The additional optional insurance of an annuitant who meets the requirements of paragraph (a) of this section is effective on the first day of the month after the date OPM receives the election form. Any annuity withholdings applicable thereto are also reinstated on the first day of the month after the date OPM receives the election form.

(c) The amount of additional optional insurance reinstated under paragraph (a) of this section is the amount that would have been in force had the individual's annuity not been terminated.

[50 FR 42006, Oct. 17, 1985]

Subpart G—Assignments

§ 872.701 Assignments.

Part 874 of this chapter, Assignment of Life Insurance, describes the right of a judge to assign all incidents of ownership in insurance coverage under this chapter (except family optional insurance under Part 873) to another person, the effects of such assignment, procedures for making an assignment, and related matters.

[50 FR 8096, Feb. 28, 1985]

PART 873—FAMILY OPTIONAL LIFE INSURANCE

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AUTHORITY: 5 U.S.C. 8716.

SOURCE: 49 FR 3045, Jan. 11, 1984, unless otherwise noted.

Subpart A—Administration and General Provisions

§ 873.101 Actions on the policy.

Optional life insurance on family members (referred to in this part as "family optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States, shall be brought against the insurance company.

§ 873.102 Payment of benefits.

(a) Upon the death of an insured family member, family optional insurance benefits will be paid to the employee, annuitant, or compensationer responsible for withholdings under § 873.401, except as provided in paragraph (b) of this section.

(b) If the employee, annuitant, or compensationer dies after the insured family member's death and before benefits are paid under this part, optional insurance will be paid as follows:

(1) Unless insurance under this chapter has been assigned in accordance with Part 874, family insurance benefits are paid to the person(s) eligible for basic insurance benefits under 5 U.S.C. 8705(a).

(2) When a judge has assigned insurance under this chapter, the family optional benefits are paid to the person who would have received the basic insurance benefits under 5 U.S.C. 8705(a) had an assignment not been made.

[50 FR 8096, Feb. 28, 1985]

§ 873.103 Correction of an error, mistake, or omission.

OPM's Associate Director for Compensation or his/her designee may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director or his/her designee that it would be against equity and good conscience not to do so.

§ 873.104 Definitions.

The terms defined under § 870.103 of this chapter have the same meanings in this part.

Subpart B—Coverage

§ 873.201 Eligibility

Each employee who is insured for basic insurance and for whom uncanceled declination of family optional insurance is not in effect is eligible to elect the family optional insurance, if his/her periodic pay, after all other deductions, is sufficient to cover its full cost.

§ 873.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline the family optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect. The 31-day time limit begins to run on the first day after February 28, 1981, on which an individual meets the definition of an employee.

(b) On a determination by an employing office, within six months after an employee becomes eligible, that he/she was unable, for cause beyond his/her control to elect or decline the family optional insurance within the prescribed time limit, the employee shall elect or decline the family optional insurance within 31 days after he/she is advised of that determination. Family optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired or in receipt of compensation and under age 65.

(c) A person who does not file with his/her employing office an election of family optional insurance on the Life Insurance Election form does not have the family optional insurance.

§ 873.203 Effective date of insurance.

(a) The effective date of an election of family optional insurance is the first day on or after April 1, 1981, that an employee actually enters on duty in a pay status on or after the day the election is received in his/her employing office.

(b) An election of family optional insurance remains in effect until canceled as provided in § 873.204. For an employee whose family optional insurance has stopped for a reason other than a declination or waiver, family optional insurance is reinstated on the first day he/she actually enters on duty in a pay status in a position in which he/she again becomes eligible.

(c) An open enrollment election of family optional insurance filed during the period from June 1 through July 1, 1985, is effective on the first day of the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for at least 32 hours. A part-time employee will need to have been in a pay and duty status for one-half of the regularly-scheduled tour of duty indicated on his or her current Standard Form 50 for newly-elected coverage to become effective. An employee who has no regularly-scheduled tour of duty or who is employed on an intermittent basis will have to have been in a pay and duty status for one-half of the hours customarily worked before newly-elected coverage can become effective. For the purpose of this subsection, employing offices can determine the number of hours customarily worked by averaging the number of hours worked in the calendar year quarter ending June 30, 1985.

[49 FR 3045, Jan. 11, 1984, as amended at 50 FR 26689, June 28, 1985]

§ 873.204 Declination.

(a) An insured person may cancel his/her family optional insurance at any time by filing a declination of family optional insurance or a waiver of basic insurance coverage. An employee files with the employing office. An annuitant files with OPM or other office which administers his/her retirement system. If still employed, a compensationer files with the employing office, and, if not still employed, with OWCP.

(b) A cancellation of family optional insurance becomes effective and family optional insurance stops at the end of the pay period in which the declination or waiver is properly filed.

(c) A declination of family optional insurance remains in effect until it is canceled as provided in § 873.205.

§ 873.205 Cancellation of declination.

(a) An employee who has declined the family optional insurance may elect it upon his/her marriage or the acquisition of a child. In order to be valid, the election must be filed with the employing office on the Life Insurance Election form no later than 60 days following the date of the event which permits the election. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, if the invididual separates from covered service prior to completion of the 60-day time limit, or if the event occurs during the period following a waiver of basic insurance when he/she is not eligible to cancel the waiver. This extension of the time may not exceed the 31-day time limit for electing insurance following employment in a covered position, or the 31-day period following the first day on which the individual becomes eligible to cancel a waiver of basic insurance.

(b) The effective date of an election under paragraph (a) of this section is the first day the employee actually enters on duty in pay status, on or after the day the employing office receives the election and basic insurance is in force.

(c) An annuitant or compensationer is not eligible to make the election provided in paragraph (a) of this section.

(d)(1) A previous declination or waiver is automatically canceled at time or reinstatement on or after April 1, 1981, if an employee has been separated from service for at least 180 days. If no new declination is filed, family optional insurance coverage is effective on the date the employee actually enters on duty in a pay status in a position wherein he/she is not excluded from insurance by law or regulation, provided that the employee has filed an affirmative election of family optional insurance on the Life Insurance Election form. An employee whose declination is so canceled and who does not file the form with his/her employing office within 31 days after reinstatement shall be deemed to have declined family optional insurance, except that an employee who fails to file the form during that period due to cause beyond his/her control shall be allowed to enroll belatedly under the conditions prescribed under § 873.202(b).

(2) An employee who returned to Federal service between April 1, 1981, and December 8, 1983, after a 180-day break in service may elect family optional insurance upon application to his or her employing office before March 7, 1984.

(e)(1) An open enrollment period will be held from June 1 through July 1, 1985, during which time employees otherwise eligible for coverage may cancel their existing declinations of coverage by affirmatively electing to be insured on a form designated by OPM.

(2) An employing office may make a determination, within 6 months after the June 1 through July 1, 1985 open enrollment period, that an employee was unable, for cause beyond his or her control, to cancel his or her then existing declination of coverage by affirmatively electing to be insured during the 1985 open enrollment period. The employee shall be permitted to submit an affirmative election of coverage within 31 days after he or she is advised of that determination. Family optional insurance coverage in that case is retroactive to the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for a sufficient length of time, as specified in § 873.203(c) to acquire coverage. Failure on the part of the employee to file an election within the 31 days prescribed in this paragraph shall be

deemed a declination of family optional insurance.

[49 FR 3045, Jan. 11, 1984, as amended at 50 FR 26689, June 28, 1985]

§ 873.206 Reconsideration.

An individual may request OPM to reconsider an agency decision or an initial decision of OPM denying family optional insurance coverage under the procedure established in § 870.205 of this chapter.

Subpart C—Amount of Insurance

§ 873.301 Amount of employee's insurance.

The amount of family optional insurance is $5,000 payable upon the death of a spouse and $2,500 payable upon the death of a child.

Subpart D—Withholdings

§ 873.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay status, the employing agency shall withhold the full cost of family optional insurance from his/her pay.

(b)(1) Subject to the provisions of § 873.604, the full cost of family optional insurance shall be withheld from the annuity of an annuitant or from the compensation of a compensationer, except that there is no withholding for an annuitant or compensationer for coverage after the end of the calendar month in which he/she becomes 65 years of age.

(2) Withholdings are not required for the period between the end of the pay period in which an individual separates from service and the beginning of the annuity or compensation payments, if later.

(c) The biweekly cost of family optional insurance applicable to employees, annuitants and compensationers (not family members), until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35	$0.30
For persons ages 35 through 39	0.31
For persons ages 40 through 44	0.52
For persons ages 45 through 49	0.72
For persons ages 50 through 54	1.10
For persons ages 55 through 59	2.00
For persons age 60 or over	3.00

The amount withheld from pay, annuity or compensation paid on other than a biweekly period shall be determined at a proportionate rate, adjusted to the nearest cent.

(d) For the purposes of this section, a person is deemed to attain 35, 40, 45, 50, 55, or 60 years on the first day of his/her pay period beginning on or after January 1 of the year following the one in which his/her corresponding birthday occurs.

(e) If an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8714c of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. A determination whether to waive collection of the overpayment of pay shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G, unless the agency involved is excluded from application of 5 U.S.C 5584, in which case any applicable authority to waive the collection may be used.

[49 FR 3045, Jan. 25, 1984, as amended at 49 FR 19288, May 7, 1984]

Subpart E—Termination and Conversion

§ 873.501 Termination and conversion of insurance.

(a) The family optional insurance of an insured person stops when his/her basic insurance stops as provided in §870.501 of this chapter, subject to a 31-day extension of family optional insurance coverage.

(b) If, because of a declination or waiver, an insured employee has not had the family optional insurance during either:

(1) The full period(s) of service during which it was available to him/her; or

(2) For the five years of service immediately preceding the date on which

that coverage stops (for annuitants) or the date of entitlement to compensation (for compensationers), the family optional insurance stops, subject to a 31-day extension of family optional insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of §870.601 (during retirement) or §870.701 (during receipt of compensation) of this chapter. For this purpose, family optional insurance will not be deemed available to an employee during periods when the employee had no family members.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter (for basic life insurance during receipt of annuity or compensation), he/she elects no basic life insurance (as provided under §§ 870.601(c)(1) or 870.701(c)(1) of this chapter), the family optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(d) The family optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation or annuity, after all other deductions, is insufficient to cover the full cost of the family optional insurance.

(e)(1) After termination of group coverage for any reason other than voluntary cancellation, an employee may, upon application and without medical examination, convert all or any part of his/her family optional insurance to an individual policy. The rates of the individual policy are the rates applicable to the employee's attained age and class of risk. An employee is eligible to convert the policy only if he/she does not return, within 3 calendar days from the terminating event, to a position allowing coverage under the group plan.

(2) The employing agency must notify the employee of the loss of group coverage and the right to convert to an individual policy either prior to or immediately following the event causing the loss of coverage.

(3) The employee's request for conversion information must be submitted to the Office of Federal Employees' Group Life Insurance and postmarked within 31 days following the date of the terminating event or within 31 days of the date the employee received notice of loss of group coverage and right to convert, whichever is later.

(4) When an agency fails to provide the notification described in paragraph (e)(2) of this section, or the employee fails for other reasons beyond his/her control to request conversion as described in paragraph (e)(3) of this section, he/she may request conversion to an individual policy by writing to the Office of Federal Employees' Group Life Insurance. Such a request must be filed within six months after an employee becomes eligible to convert the family optional insurance. The employee must show that he/she was not notified of the loss of coverage and the right to convert, and was not otherwise aware of it, or that he/she was unable, for cause beyond his/her control, to convert the family optional insurance. The Office of Federal Employees' Group Life Insurance will determine if the employee is eligible to convert, and when the determination is affirmative, the employee may convert within 31 days of that determination.

(5) When an employee converts his/her family optional insurance anytime after the group coverage has ended, the individual plan coverage is retroactive to the day following the day the group coverage ended. The employee must pay the premiums due for the retroactive period.

(6) An employee who fails to exercise his/her right to convert to an individual policy within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, whichever is later, is deemed as having declined coverage unless OFEGLI determines the failure was for cause beyond his/her control as described in paragraph (e)(4) of this section.

(f)(1) Following the death of an insured employee, annuitant or compensationer, or following the termination of group coverage of an employee for any reason other than voluntary cancellation, family members as defined by 5 U.S.C. 8701(d) may, upon application and without medical examination, convert their family optional insurance coverage to an individual policy. The rates of the individual policy are the rates applicable to the family member's attained age and class of risk. A family member is eligible to convert the policy only if the employee does not return, within 3 calendar days from the terminating event, to a position allowing coverage under the group plan.

(2) The employing agency must notify the employee of the loss of group coverage and the right to convert to an individual policy either prior to or immediately following the event (except in the event of death) causing the loss of coverage. A family member can not convert to an individual policy if the employee or former employee exercises his/her right of conversion under paragraph (e)(1) of this section. In the event of death, the employing office (for employees), the office which administers a retirement system for Federal employees (for annuitants), or the Office of Workers' Compensation Programs (for compensationers) will furnish the decedent's family members with a notice of loss of group coverage and the right to convert to an individual policy.

(3) The family member's request for conversion information must be submitted to the Office of Federal Employees' Group Life Insurance and postmarked within 31 days following the date of the terminating event or within 31 days of the date the family member received notice of the loss of group coverage and right to convert, whichever is later.

(4) When the employing office (for employees), the Office which administers the retirement system for Federal employees (for annuitants), or the Office of Workers' Compensation Programs (for compensationers) fails to provide the notification described in paragraph (f)(2) of this section, or the family member fails for other reasons beyond his/her control to request conversion as described in paragraph (f)(3) of this section, he/she may request conversion to an individual policy by writing to the Office of Federal Employee's Group Life Insurance. Such a request must be filed within six months after a family member becomes eligible to convert the family optional life insurance. The family member must show that he/she was not notified of the loss of coverage and the right to convert, and was not otherwise aware of it, or that he/she was unable, for cause beyond his/her control, to convert the family optional insurance coverage. The Office of Federal Employees' Group Life Insurance will determine if the family member is eligible to convert, and when the determination is affirmative, the family member may convert within 31 days of that determination.

(5) When a family member converts his/her coverage anytime after the group coverage has ended, the individual plan coverage is retroactive to the day following the day the group coverage ended. The family member must pay the premiums due for the retroactive period.

(6) A family member who fails to exercise his/her right to convert to an individual policy within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, whichever is later, is deemed as having declined coverage unless OFEGLI determines the failure was for cause beyond his/her control as described in paragraph (f)(4) of this section.

(g) The 31-day extension of coverage provided under this subpart cannot be extended beyond 31 days, nor is it contingent upon timely issuance of notice of the right of conversion to an individual policy.

(h) The amount of an individual policy as provided under paragraphs (e) or (f) of this section shall not be less than $1,000.

[49 FR 3045, Jan. 11, 1984, as amended at 50 FR 7905, Feb. 27, 1985]

Subpart F—Annuitants and Compensationers

§ 873.601 Amount of insurance.

The amount of family optional insurance (on each family member) continued during receipt of annuity or compensation reduces by two percent a month effective at the beginning of the second calendar month after (1) the date the insurance would otherwise have stopped, or (2) the annuitant's or compensationer's 65th birthday, whichever is later. At 12:00 PM on the day preceding the 50th reduction the insurance stops, with no extension of coverage or right of conversion.

§ 873.602 Termination of annuity or compensation.

If the annuity or compensation paid to an insured person is terminated, or if the Department of Labor finds that an insured person receiving compensation is able to return to duty, family optional insurance held as an annuitant or compensationer stops, with no 31-day extension of coverage or right of conversion, on the date of that termination or finding.

§ 873.603 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation is waived or suspended, family optional insurance continues. When payment of either annuity or compensation is resumed, the paying office shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemploying office shall withhold the full cost of the insurance during each pay period of reemployment.

§ 873.604 Reemployed annuitants.

(a)(1) An annuitant appointed to a position in which he/she is not excluded from basic insurance coverage by law or regulation is eligible for family optional insurance as an employee. If he/she has family optional insurance as a retired employee, that insurance (and any corresponding withholdings) is suspended on the day preceding his/her first day in a pay status under the appointment and, unless he/she files with his/her employing office a declination of family optional insurance (or a waiver of basic insurance), he/she acquires family optional insurance as an employee.

(2) Except as provided in paragraph (b) of this section, the family optional insurance acquired as an employee stops, with no 31-day extension or right of conversion, on the date reemployment terminates and any suspended family optional insurance which may remain in force following reductions after age 65 (and corresponding annuity withholdings, if any) is reinstated on the day following termination of the reemployment.

(b) Family optional insurance acquired during reemployment may be continued after termination of the reemployment if the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraph (c)(2), (c)(3) or (c)(4) of § 870.601 of this chapter, and

(3) Has had family optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less.

If the family optional insurance acquired during reemployment is so continued, any suspended family optional insurance stops with no 31-day extension of coverage or right of conversion.

§ 873.605 Restored disability annuitants.

(a) An annuitant whose disability annuity is terminated because of restoration to earning capacity or recovery from disability and whose disability annuity is restored under section 8337(e) of title 5, United States Code, after December 31, 1983, may elect to resume family optional insurance held immediately before his or her disability annuity was terminated if:

(1) He or she has made an election under § 870.603 of this chapter; and

(2) The election is received by OPM within 60 days after OPM mails a notice of insurance eligibility and election form.

(b) The family optional insurance of an annuitant who meets the requirements of paragraph (a) of this section is effective on the first day of the month after the date OPM receives the election form. Any annuity withholdings applicable thereto are also reinstated on the first day of the month after OPM receives the election form.

(c) The amount of family optional insurance reinstated under paragraph (a) of this section is the amount that would have been in force had the individual's annuity not been terminated.

[50 FR 42006, Oct. 17, 1985]

Subpart G—Definition of Family Member

§ 873.701 Definition of family member.

For the purposes of this part, the terms "spouse" and "child" shall mean a spouse and unmarried dependent child within the meaning of these terms under the definition of "family member" under 5 U.S.C. 8701(d).

§ 873.702 Proof of dependency.

(a) A child is considered to be dependent on a employee or former employee if he/she is:

(1) A legitimate child,

(2) An adopted child,

(3) A stepchild or recognized natural child who lived with the employee or former employee in a regular parent-child relationship,

(4) A recognized natural child for whom a judicial determination of support has been obtained, or

(5) A recognized natural child to whose support the employee or former employee makes regular and substantial contribution.

(b) For the purposes of a claim under this part, an otherwise eligible child must have been dependent on the employee or former employee at the time of the child's death in order to qualify as a family member.

(c) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support.

(1) Evidence of eligibility as a dependent child for benefits under State or Federal programs,

(2) Proof of inclusion of the child as a dependent on the employee's or former employee's income tax returns,

(3) Canceled checks, money orders, or receipts for periodic payments from the employee or former employee for or on behalf of the child.

(4) Evidence of goods or services which show regular and substantial contributions,

(5) Any other evidence which the Office of Federal Employees' Group Life Insurance shall find to be sufficient proof of support or of paternity or maternity.

(d) The Office of Federal Employees' Group Life Insurance may deny an individual coverage as a dependent child, if:

(1) Evidence shows that the employee or former employee did not recognize the child as his/her own despite a willingness to support the child, or

(2) Evidence calls the child's paternity or maternity into doubt, despite the employee's or former employee's recognition and support of the child.

(e) For the purposes of an employee's election of family optional insurance upon the acquisition of a child, as provided in § 873.205, the employing agency shall base any requisite determination of dependency on the criteria expressed in paragraphs (a), (c), and (d) of this section.

§ 873.703 Child incapable of self-support.

(a) Upon receipt of a claim for family optional insurance in the event of death of a child over the age of 21 years, the Office of Federal Employees' Group Life Insurance shall determine, on the basis of such evidence as it deems necessary, whether the deceased child was incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age.

(b) In the event of an employee's election of family optional insurance under § 873.205, where the opportunity to elect is based solely on the acquisition of a child over age 21, the employee shall submit to the employing office at the time of filing the election, a certificate of the physician that the child is incapable of self-support because of a physical or mental disability which existed before the child became 22 years of age, and which can be expected to continue for more than one year. The certificate shall include a statement of the name of the child, the nature of his/her disability, the period of time it has existed, and its probable future course and duration. The certificate shall be signed by the physician and show his/her office address.

PART 874—ASSIGNMENT OF LIFE INSURANCE

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874.101 Definitions.

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Subpart G—Designations of Beneficiary

874.701 Designations of beneficiary.

AUTHORITY: 5 U.S.C. 8716, unless otherwise noted.

SOURCE: 50 FR 8096, Feb. 28, 1985, unless otherwise noted.

Subpart A—Definitions

§ 874.101 Definitions.

The terms defined under § 870.103 of this chapter have the same meanings in this part.

Subpart B—Coverage

§ 874.201 Assignments permitted.

(a) A judge may irrevocably relinquish ownership of basic life insurance, standard optional life insurance, and additional optional life insurance coverage under this chapter by assigning it to one or more individuals. If a judge owns more than one of these types of coverage—both basic and standard optional, for example—he or she must assign all the insurance. A judge may not assign only a portion of such coverage. Family optional insurance may not be assigned.

(b) If the assignment of the insurance is to two or more individuals, the judge must specify percentage shares, rather than dollar amounts or types of insurance, to go to each assignee.

(c) If a judge who has made an assignment later elects increased insurance coverage under §§ 871.205 and 872.205 of this chapter, the increased coverage will be considered covered by the already-existing assignment.

(d) A judge who assigns ownership of insurance continues to be the insured individual, but the assignee assumes those rights of an insured employee that are specified in this part.

(e) Once assigned, the value of the insurance increases or decreases according to any automatic increase or decrease in the value of the coverage as provided for by Parts 870, 871, and 872 of this chapter.

Subpart C—Assignment Procedures

§ 874.301 Making an assignment.

To assign basic insurance and, if applicable, standard optional insurance and additional optional insurance, judges must make a written request for an approved assignment form. To effect an assignment they must then complete and submit the signed and witnessed form indicating their intent to irrevocably assign all incidents of ownership in the insurance. Judges who are employees send the form to their employing office. Judges who are annuitants send the form to their retirement system. Judges who are compensationers send the form to OPM.

§ 874.302 Effective date of assignment.

An assignment under this part is effective on the date an approved and properly completed assignment form is received by the employing office, the retirement system, or OPM.

§ 874.303 Waiver of insurance.

The assignee assumes all rights to waive insurance under this chapter according to the provisions of §§ 870.204, 871.204, and 872.204 of this chapter. When the insurance is assigned to two or more people, these assignees must all agree to the waiver. A waiver or cancellation of basic insurance in accordance with the provisions of § 870.204 of this chapter terminates all insurance under this chapter.

§ 874.304 Notification of current addresses.

Each assignee and each beneficiary of an assignee is responsible for keeping the office where the assignment is filed advised of his or her current address.

§ 874.305 Reconsideration.

A judge or an assignee may ask OPM to reconsider any determination that he or she believes denies an entitlement related to assignments under section 8706(f), title 5, U.S. Code, or Part 874 of this chapter. The process and time limits for requesting reconsideration are specified in § 870.205 of this chapter.

Subpart D—Annuitants and Compensationers

§ 874.401 Annuitants and compensationers.

If a judge assigns basic insurance coverage under this chapter and later becomes eligible to continue such insurance coverage while receiving annuity or workers' compensation, as provided in §§ 870.601(a) and 870.701(a) of this chapter:

(a) The judge may, at the time he or she retires or becomes eligible to receive workers' compensation, elect increased lifetime insurance coverage as provided in §§ 870.601(c)(3) and (4) and 870.701(c)(3) and (4) of this part.

(b) After the judge has made the election described in paragraph (a) of this section, the assignee (or, in cases of multiple assignees, all of the assignees acting together) may, at any time, elect to terminate all or a part of the basic insurance coverage as provided in §§ 870.601(c)(1) and (4) and 870.701(c)(1) and (4) of this part.

Subpart E—Amount of Insurance and Withholdings and Contributions

§ 874.501 Amount of insurance.

The amount of insurance is based on the judges' basic pay as specified in Subpart C in Parts 870, 871, and 872 of this chapter.

§ 874.502 Withholdings and contributions.

Subject to the provisions of Subpart D in Parts 870, 871, and 872 of this chapter, premium payments for assigned insurance are withheld from the salary, annuity, or compensation of the judge.

Subpart F—Termination and Conversion

§ 874.601 Termination.

Assigned insurance terminates under the conditions stated in Subpart E of Parts 870, 871, and 872 of this chapter.

§ 874.602 Eligibility to convert.

(a) When a judge's insurance terminates under the conditions described in Subpart E of Parts 870, 871, or 872 of this chapter an assignee has the right to convert all or a portion of his or her group insurance to an individual policy on the judge. The conditions specified in those subparts apply to assignees who elect to convert.

(b) When insurance is assigned to more than one assignee, each assignee has the right to convert all or part of his or her share of the insurance. Any assignee who does not convert loses all interest in the insurance.

(c) When multiple assignees have been named and they wish to convert the assigned insurance to individual policies on the judge in accordance with this subpart, the maximum amount of insurance each assignee will be able to convert will be determined by the dollar amount corresponding to the assignee's share of total insurance under this chapter. If such amount is not a multiple of $1,000, it will be rounded up to the next thousand dollar amount.

§ 874.603 Rates for converted insurance.

Rates for converted life insurance are based on the insured judge's attained age and class of risk at the time the conversion policy is issued.

§ 874.604 Notification of conversion rights.

The employing office, retirement system, or OPM will notify each assignee of his or her conversion right at the time the assigned group insurance terminates.

Subpart G—Designations of Beneficiary

§ 874.701 Designations of beneficiary.

(a) Each assignee or the legally appointed guardian of an assignee may, as part of the assignment process, designate a beneficiary or beneficiaries to receive insurance proceeds upon death of the insured judge and may also subsequently change the beneficiaries. A surviving beneficiary will receive the designated amount of assigned insurance upon death of the insured judge. Assignees may designate themselves the primary beneficiaries and name some other person(s) as contingent beneficiaries to receive insurance benefits only in the event that the assignees predecease the insured judge.

(b) Assigned insurance will be paid to an assignee's estate if the assignee predeceases the insured judge and:

(1) An assignee does not designate a beneficiary, or

(2) An assignee's designated beneficiary predeceases the insured judge.

(c) An assignment automatically cancels a judge's prior designation of beneficiary.

(d) The provisions of § 870.901 (a) through (e) of this chapter apply to designations of beneficiary filed by assignees.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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AUTHORITY: 5 U.S.C. 8913, unless otherwise noted.

SOURCE: 33 FR 12510, Sept. 4, 1968, unless otherwise noted.

NOMENCLATURE NOTE: For nomenclature changes to Part 890, see 44 FR 76747, Dec. 28, 1979.

Subpart A—Administration and General Provisions

§ 890.101 Definitions; time computations.

(a) In this part:

(1) Terms defined by section 8901 of title 5, United States Code, have the meanings there set forth.

(2) "Cancellation" means the act of filing a health benefits registration form terminating enrollment in a health benefits plan and electing not to be enrolled for the future by an enrolled employee or annuitant who is eligible to continue enrollment.

(3) "Change of enrollment" means the registration of an enrolled employee or annuitant to be enrolled for another plan or option, or for a different type of coverage (self alone or self and family), from that for which then enrolled.

(4) "Eligible" means eligible under the law and this part to be enrolled.

(5) "Employing office" means the office of an agency to which jurisdiction and responsibility for health benefits actions for an employee or an eligible former spouse of an employee have been delegated. For enrolled annuitants, including survivor annuitants and former spouse annuitants who are not also eligible employees, "employing office" is the office which has authority to approve payment of annuity or workmen's compensation for the annuitant concerned. For former spouses not receiving an annuity, "employing office" is the agency that employed the Federal employee at the time the marriage was dissolved.

(6) "Foster child" means a child who:

(i) Lives with the employee or annuitant in a regular parent-child relationship and

(ii) Is expected to be raised to adulthood by the employee or annuitant.

(7) "Immediate annuity" means an annuity which begins to accrue not later than 1 month after the date enrollment under a health benefits plan would cease for an employee or member of family if he were not entitled to continue enrollment as an annuitant. Notwithstanding the foregoing, an annuity which commences on the birth of the posthumous child of an employee or annuitant is an immediate annuity.

(8) "Option" means a level of benefits. It does not include distinctions as to whether the members of the family are covered.

(9) "Pay period" means the biweekly pay period established pursuant to section 5504 of title 5, United States Code, for the employees to whom that section applies and the regular pay period for employees not covered by that section. "Pay period" as it relates to a former spouse who is not actively receiving an annuity means the regular pay period for employees of the agency to which jurisdiction and responsibility for health benefits actions for the former spouse have been delegated as provided by paragraph (a)(5) of this section. "Pay period" for annuitants means the period for which a single installment of annuity is customarily paid.

(10) "Register" means to file with the employing office a properly completed health benefits registration form, either electing to be enrolled in a health benefits plan or electing not to be enrolled. "Register to be enrolled" means to register an election to be enrolled. "Enrolled" means a valid registration form has been accepted by

the employing office and the enrollment in a health benefits plan approved by OPM under this part has not been terminated or cancelled.

(11) "Regular tour of duty" means a work schedule, prescribed in advance to continue indefinitely or for at least 6 months, of a certain number of hours or other time units in a day, week, biweekly pay period, month, or year.

(b) Whenever, in this part, a period of time is stated as a number of days or a number of days from an event, the period is computed in calendar days, excluding the day of the event. Whenever, in this part, a period of time is defined by beginning and ending dates, the period includes the beginning and ending dates.

[33 FR 12510, Sept. 4, 1968, as amended at 46 FR 35082, July 7, 1981; 49 FR 1046, Jan. 9, 1984; 50 FR 24758, June 13, 1985]

§ 890.102 Coverage.

(a) Each employee, other than those excluded by paragraph (c) of this section, is eligible to be enrolled in a health benefits plan at the time and under the conditions prescribed in this part.

(b) An employee who serves in cooperation with non-Federal agencies and is paid in whole or in part from non-Federal funds may register to be enrolled within the period prescribed by OPM for the group of which the employee is a member following approval by OPM of arrangements providing that (1) the required withholdings and contributions will be made from Federally-controlled funds and timely deposited into the Employees Health Benefits Fund, or (2) the cooperating non-Federal agency will, by written agreement with the Federal agency, make the required withholdings and contributions from non-Federal funds and transmit them for timely deposit into the Employees Health Benefits Fund.

(c) The following employees are not eligible:

(1) An employee serving under an appointment limited to 1 year or less, except an acting postmaster, and a Presidential appointee appointed to fill an unexpired term.

(2) An employee whose employment is of uncertain or purely temporary duration, or who is employed for brief periods at intervals, and an employee who is expected to work less than 6 months in each year, except for an employee who is employed under an OPM approved career-related work-study program under Schedule B of at least 1 year's duration and who is expected to be in a pay status for at least one-third of the total period of time from the date of the first appointment to the completion of the work-study program.

(3) An intermittent employee—a non-full-time employee without a prearranged regular tour of duty.

(4) An employee whose pay on an annual basis is $350 a year or less.

(5) A beneficiary or patient employee in a Government hospital or home.

(6) An employee paid on a contract or fee basis, except an employee who is a citizen of the United States who is appointed by a contract between the employee and the Federal employing authority which requires his personal service and is paid on the basis of units of time.

(7) An employee paid on a piecework basis, except one whose work schedule provides for full-time service or part-time service with a regular tour of duty.

(d) Paragraph (c) of this section does not deny coverage to an individual appointed to perform "part-time career employment," as defined in section 3401(2) of title 5, United States Code, and 5 CFR Part 340, Subpart B.

(e) The Office of Personnel Management makes the final determination of the applicability of this section to specific employees or groups of employees.

(5 U.S.C. 1104; Pub. L. 95—454; 92 Stat. 1120 and sec. 3(5) of the Civil Service Reform Act of 1978; Pub. L. 95—454; 92 Stat. 1112; 5 U.S.C. 8913(b))

[33 FR 12510, Sept. 4, 1968, as amended at 33 FR 20002, Dec. 31, 1968; 35 FR 753, Jan. 20, 1970; 44 FR 57382, Oct. 5, 1979; 46 FR 25595, May 8, 1981]

§ 890.103 Correction of errors.

(a) The employing office can make prospective correction of administrative errors as to enrollment at any time.

(b) OPM may order correction of an error, mistake, or omission upon a showing satisfactory to OPM that it would be against equity and good conscience not to do so.

(c) OPM may order the termination of an employee's or annuitant's enrollment in a group practice plan and permit his/her enrollment in another plan upon a showing satisfactory to OPM that the furnishing of adequate medical care is jeopardized by a seriously impaired relationship between a patient and the plan's medical staff.

[45 FR 23637, Apr. 8, 1980]

§ 890.104 Initial decision and reconsideration.

(a) *Who may file.* An employee, annuitant, or former spouse may request OPM to reconsider a decision of an employing office or an initial decision of OPM refusing to permit registration for or change of enrollment or refusing to permit enrollment of an individual as a family member.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by OPM. The time limit may be extended as provided in paragraph (e) of this section.

(c) *Initial decision.* An OPM decision shall be considered an initial decision as used in § 890.104(a) above when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration.

(d) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number, if appropriate, name of carrier and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial OPM decision must be filed within 30 calendar days from the date of OPM's initial decision. OPM may extend the time limit on filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration, OPM shall issue a final decision which shall be in writing, and shall fully set forth the findings and conclusions of OPM.

[45 FR 23637, Apr. 8, 1980, as amended at 50 FR 24758, June 13, 1985]

§ 890.105 Review of claim for payment or service.

(a) OPM does not adjudicate individual claims for payment or service under health benefits plans. Individual claims for payment or service are adjudicated by the health benefits plan in which the employee or annuitant is enrolled.

(b) If a claim (or portion of a claim) or a service is initially denied by a health benefits plan, the plan will reconsider its denial upon receipt within one year of the denial of written request for reconsideration from the employee or annuitant. Such written request should set forth the reasons why the employee or annuitant believes that the denied claim or service should have been paid or provided. The plan must affirm the denial in writing to the employee or annuitant, setting out in detail the reasons therefor, within 30 days after receipt of the request for reconsideration, or pay or provide the claim or service within such time, unless it requests additional information reasonably necessary to a determination. Such requests by the plan must specifically identify the additional information required and the reason or reasons therefor. If the information requested is not supplied within 60 days of the request therefor, the plan shall make its determination and notify the employee or annuitant as provided elsewhere in this section.

(c) If a plan either affirms its denial of a claim, or fails to respond to a written request for reconsideration within 30 days of the request, the employee or annuitant may make a written request to OPM's Associate Director for Compensation for a review to determine whether the plan's denial is in accord with the terms of OPM's contract with the carrier of the plan. The plan shall provide written notice to the employee or annuitant of the right to request such a review when it affirms a denial after reconsideration. A request for review will not be honored if received by OPM more than 90 days from the date of the plan's affirmation of the denial. Nor will a request for review be honored if, upon request by the Associate Director, the employee or annuitant does not furnish authorization signed by the patient (or person capable of acting for the patient) for the release of medical evidence to the Associate Director.

(d) In reviewing a claim denied by a plan, the Associate Director will review copies of all original evidence and findings upon which the plan denied the claim and any additional evidence submitted to the Associate Director or otherwise obtained by the plan or Associate Director. Plans will release such evidence and findings to the Associate Director within 30 days of request therefor. Any evidence obtained by the Associate Director in connection with a review of the denied claim will be held privileged and confidential and will be reviewed only by persons having official need to see it.

(e) In reviewing a claim denied by a plan, the Associate Director may request the employee or annuitant to obtain and submit additional medical or hospital records. The Associate Director may also request a confidential advisory opinion from an independent physician, or such other information or evidence as may in the Associate Director's judgment, be required to evaluate the claim denial. An Associate Director's request for an advisory opinion shall not disclose the identity of the claimant or patient, the plan, or any medical institutions or physicians involved in the claim.

(f) Within 30 days after all evidence requested by the Associate Director has been received, it shall notify the employee and the plan of its findings on review.

[40 FR 25433, June 16, 1975. Redesignated at 44 FR 37895, June 29, 1979 and 45 FR 23637, Apr. 8, 1980]

§ 890.106 Delegation of authority for resolving certain contract disputes.

For the purpose of making findings of fact and to the extent that conclusions of law may be required under any proceeding conducted in accordance with the provisions of the disputes clause included in health benefits contracts, OPM delegates this function to the Armed Services Board of Contract Appeals.

[40 FR 50023, Oct. 28, 1975; 40 FR 55829, Dec. 2, 1975. Redesignated at 44 FR 37895, June 29, 1979 and 45 FR 23637, Apr. 8, 1980]

§ 890.107 Legal actions.

An action to compel enrollment of an employee or annuitant not excluded by § 890.102(c) should be brought against the employing office. An action to recover on a claim for health benefits should be brought against the carrier of the health benefits plan. An action to review the legality of OPM's regulations or a decision made by OPM should be brought against the Office of Personnel Management, Washington, D.C. 20415.

[33 FR 12510, Sept. 4, 1968. Redesignated at 44 FR 37895, June 29, 1979 and 45 FR 23637, Apr. 8, 1980]

Subpart B—Health Benefits Plans

§ 890.201 Minimum standards for health benefits plans.

(a) To be qualified to be approved by OPM, a health benefits plan shall:

(1) Comply with chapter 89 of title 5, United States Code, and this part, as amended from time to time.

(2) Accept the enrollment, in accordance with this part, and without regard to age, race, sex, health status, or hazardous nature of employment, of each eligible employee and annuitant except that a plan which is sponsored or underwritten by an employee organization may not accept the enrollment of a person who is not a member of the organization, but it may not limit membership in the organization on account of these prohibited factors. The carrier may terminate the enrollment of an employee or of an annuitant, other than a survivor annuitant, in a health benefits plan

sponsored or underwritten by an employee organization on account of termination of membership in the organization. A comprehensive medical plan need not enroll an employee or annuitant residing outside geographic areas specified by the plan. A carrier who wishes to terminate the enrollment of an employee or annuitant under this paragraph may do so by notifying the employing office in writing, with a copy of the notice to the employee. The termination is effective at the end of the pay period in which the employing office receives the notice.

(3) Provide health benefits for each enrolled employee and annuitant and covered member of their families wherever they may be.

(4) Provide for conversion to a contract for health benefits regularly offered by the carrier, or an appropriate affiliate, for group conversion purposes, which shall be guaranteed renewable, subject to such amendments as apply to all contracts of this class, except that it may be canceled for fraud, overinsurance or nonpayment of periodic charges. A carrier shall permit conversion within the time allowed by the temporary extensions of coverage provided under § 890.401 for each employee, annuitant, and member of family entitled to convert. When an employing office gives an employee written notice of his privilege of conversion, the carrier shall permit conversion at any time before (i) 15 days after the date of notice or (ii) 75 days after his enrollment is terminated, whichever is earlier. When OPM requests an extension of time for conversion because of delayed determination of ineligibility for immediate annuity, the carrier shall permit conversion until the date specified by OPM in its request for extension. On conversion, the contract becomes effective as of the day following the last day of the temporary extension, and the employee, annuitant, or member of the family, as the case may be, shall pay the entire cost thereof directly to the carrier. The nongroup contract may not deny or delay any benefit covered by the contract for a person converting from a plan approved under this part except to the extent that benefits are continued under the health benefits plan from which he converts.

(5) Provide that each employee and annuitant who enrolls in the plan receive an identification card or cards or other evidence of his enrollment.

(6) Provide a standard rate structure which contains, for each option, one standard individual rate, and one standard family rate.

(7) Maintain statistical records regarding the plan, separately from those of any other activities conducted or benefits offered by the carrier sponsoring or underwriting the plan.

(8) Provide for a special reserve for the plan. The carrier shall account for amounts retained by it as reserves for the plan separately from reserves maintained by it for other plans. The carrier shall invest the special reserve and income derived from the investment of the special reserve shall be credited to the special reserve. If the contract is terminated or approval of the plan is withdrawn, the carrier shall return the special reserve to the Employees Health Benefits Fund. However, in the case of a comprehensive medical plan, the carrier, without regard to the foregoing provisions of this paragraph, shall follow such financial procedures as are mutually agreed on by the carrier and OPM.

(9) Provide for continued enrollment to the end of the then current pay period of each employee and annuitant enrolled at the effective date of termination of a contract. The carrier is entitled to subscription charges for this continued enrollment.

(10) Provide that any covered expenses incurred from January 1 to the effective date of an open season change count toward the losing carrier's prior year deductible. If the prior year deductible or family limit on deductibles of the losing carrier had previously been met, the enrolled individual (and eligible family members) shall be eligible for reimbursement by the losing carrier for covered expenses incurred during the current year. Reimbursement of covered expenses shall apply only to covered expenses incurred from January 1 to the effective date of the open season change. This section shall not apply to any

other permissible changes made during a contract year.

(b) To be qualified to be approved by OPM, a health benefits plan shall not:

(1) Deny a covered person a benefit provided by the plan for a service performed on or after the effective date of coverage solely because of a preexisting physical or mental condition.

(2) Require a waiting period for any covered person for benefits which it provides.

(3) Have more than two options.

(4) Have an initiation, service, enrollment, or other fee or charge in addition to the rate charged for the plan, except that a comprehensive medical plan may impose an additional charge to be paid directly by the employee or annuitant for certain medical supplies and services, if the supplies and services on which additional charges are imposed are clearly set forth in advance and are applicable to all employees and annuitants. This subparagraph does not apply to charges for membership in employee organizations sponsoring or underwriting plans.

(5) Paragraphs (b)(1) and (2) of this section do not preclude a plan offering benefits for dentistry or cosmetic surgery, or both, limited to conditions arising after the effective date of coverage.

[33 FR 12510, Sept. 4, 1968, as amended at 43 FR 52460, Nov. 13, 1978; 47 FR 14871, Apr. 6, 1982; 49 FR 48905, Dec. 17, 1984]

§ 890.202 Minimum standards for health benefits carriers.

The carrier of an approved health benefits plan must meet the requirements of chapter 89 of title 5, United States Code, and the following requirements:

(a) It must be lawfully engaged in the business of supplying health benefits.

(b) It must have, in the judgment of OPM, the financial resources and experience in the field of health benefits to carry out its obligations under the plan.

(c) It must keep such reasonable financial and statistical records and furnish such reasonable financial and statistical reports with respect to the plan as may be requested by OPM.

(d) It must permit representatives of OPM and of the General Accounting Office to audit and examine its records and accounts which pertain, directly or indirectly, to the plan at such reasonable times and places as may be designated by OPM or the General Accounting Office.

(e) It must accept, subject to adjustment for error or fraud, in payment of its charges for health benefits for all employees and annuitants enrolled in its plan, the enrollment charges received by the Employees Health Benefits Fund less the amounts set aside for the administrative and contingency reserves prescribed in § 890.503. OPM will pay over the amounts due each carrier at such times as are agreed on by the carrier and OPM.

(f) A carrier which is an employee organization must continue coverage, without requirement of membership, of any eligible survivor annuitants.

§ 890.203 Application for approval of, and proposal of amendments to, health benefit plans.

(a)(1) Comprehensive medical plans should apply for approval by writing to the Office of Personnel Management, Washington, DC 20415. Application letters must be accompanied by any descriptive material, financial data, or other documentation required by OPM. Plans must submit the letter and attachments in the OPM-specified format by January 31 of the year preceding the contract year. For contract year 1986 only, the letter application and attachments may be submitted as late as March 6, 1985. Plans must submit evidence demonstrating they meet all requirements for approval by March 31 of the year preceding the contract year. Plans that miss either deadline cannot be considered for participation in the next contract year. All newly approved plans must submit benefit and rate proposals to OPM by May 31 of the year preceding the contract year to be considered for participation in that contract year. OPM may make counterproposals at any time.

(2) Application for approval of employee organization plans may be made by letter to the Office of Person-

nel Management, Washington, D.C. 20415, after December 31, 1978, and before January 1, 1980. This letter application is to be accompanied by such descriptive material, financial data and documentations as OPM may require in its review process and in the format specified by OPM. Participation of an approved plan becomes effective on the January 1 which is (i) at least 9 months after OPM receives the application and (ii) at least 6 months after OPM receives all evidence to demonstrate that the plan has met all requirements for approval.

(b) Changes in rates and benefits for approved health benefits plans shall be considered at the discretion of the Director of OPM. If the Director of OPM determines that it is beneficial to enrollees and the Federal Employees Health Benefits Program to invite health plan benefit and/or rate changes for a given contract period, a "call letter" shall be issued to the carrier approximately 9 months prior to the expiration of the current contract period. Any proposal for change shall be in writing, specifically describe the change proposed, and be signed by an authorized official of the carrier. OPM will review any requested proposal for change and will notify the carrier of its decision to accept or reject the change. OPM may make a counter proposal or at any time propose changes on its own motion. Benefits changes and rate proposals, when requested by OPM, shall be submitted not less than 7 months before the expiration of the then current contract period, unless the Director of OPM determines that a later date is acceptable. The negotiation period shall begin approximately 7 months before the expiration of the current contract period, and OPM shall seek to complete all benefit and rate negotiations no later than 3 months preceding the contract period to which they will apply.

[37 FR 20668, Oct. 3, 1972, as amended at 41 FR 40090, Sept. 17, 1976; 43 FR 52461, Nov. 13, 1978; 48 FR 16232, Apr. 15, 1983; 50 FR 8315, Feb. 28, 1985]

§ 890.204 Withdrawal of approval of health benefits plans.

(a) The Director may withdraw his or her approval of a health benefit plan or carrier.

(b) Before withdrawing approval, the Director shall cause to be sent, by certified mail, a notice of the carrier stating that he or she intends to withdraw OPM approval of a health benefits plan therefor. The carrier is entitled to reply in writing within 15 days of its receipt of the notice, stating the reasons why approval should not be withdrawn.

(c) On receipt of the reply, or in the absence of a timely reply, the Director shall set a time and place for hearing. The Director shall conduct the hearing or designate a representative to do so, unless the carrier waives hearing. The carrier shall be given notice thereof, by certified mail, at least 15 days in advance of the hearing. The carrier is entitled to appear by representative and present oral and written evidence and argument in opposition to the proposed action.

(d) The Director shall make his or her decision on the record and communicate it to the carrier by certified mail. The Director may set a future effective date for withdrawal of his or her approval.

(e) The Director, in his or her discretion, may reinstate approval on a finding that the reasons for withdrawing approval no longer exist.

[33 FR 12510, Sept. 4, 1968. Redesignated at 49 FR 1046, Jan. 9, 1984]

Subpart C—Registration and Enrollment

§ 890.301 Opportunities to register to enroll and change enrollment.

(a) *Initial registration.* Except as otherwise provided in this part, each employee who becomes eligible shall register within 31 days after becoming eligible.

(b) *Belated registration.* When an employing office determines that an employee was unable, for cause beyond his control, to register to be enrolled or to change his enrollment within the time limits prescribed by this section, that office shall accept his registration within 31 days after it advises him of that determination.

(c) *Reregistration.* An employee whose enrollment was terminated under § 890.304(a)(4), or because he/she had a break in service of more than 3 days, shall register within 31 days after his/her return to pay status.

(d) *Open season.* An open season will be held from May 3, 1982, through May 28, 1982, and from November 22, 1982, through December 10, 1982, and in all future years from the Monday of the second full workweek in November through the Friday of the first full workweek in December, unless otherwise announced by the Director of the Office of Personnel Management for reasons, based on conditions, and with effective dates specified in a Federal Personnel Manual (FPM) Bulletin. During open season:

(1) An eligible unenrolled employee may register to be enrolled.

(2) An enrolled employee, annuitant, or former spouse may change to another plan, another option, or from self alone to self and family, or may make any combination of these changes.

(e) *Change in family status.* (1) Other than a former spouse, an enrolled employee or annuitant may register to change enrollment from self alone to self and family, or from one plan or option to another, or both, and an employee, if registered not to be enrolled, may register to be enrolled, at any time during the period beginning 31 days before a change in marital status and ending 60 days after the change in marital status. Other than a former spouse, an enrolled employee or annuitant may change enrollment from self alone to self and family within 60 days after any other change in family status.

(2) An enrolled former spouse may register to change enrollment from self alone to self and family, or from one plan or option to another, or both, within 60 days after the birth or acquisition of a child who is a qualified family member under § 890.804(a) of this part.

(f) *Change to self alone.* (1) An employee, annuitant, or former spouse may register at any time to change enrollment from self and family to self alone. If an employee, annuitant, or former spouse changes his or her enrollment to self alone, any family members who lose coverage are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract.

(2) Other than a former spouse, an employee or annuitant who is covered by the enrollment of another under this part may elect self alone coverage within 31 days after a change in the covering enrollment has been filed under authority of this paragraph.

(g) *Loss of coverage under Federal programs.* (1) An employee who is not enrolled, but is covered by another federally-sponsored health benefits program or by an enrollment under Part 891 of this chapter, and whose coverage or enrollment terminates under the other federally-sponsored program or Part 891, may register to be enrolled:

(i) Within 31 days after termination of coverage for a reason other than death; or

(ii) Within 60 days after termination of coverage because of death of the enrollee.

(2) An employee who is not enrolled but is covered by the enrollment of another under this part, may register to be enrolled within 31 days after termination of his coverage under the other's enrollment, other than because of death or cancellation, and within 60 days after termination, because of death, of the other's enrollment.

(3) An employee annuitant who was covered by the enrollment of another under this part and had been covered (including enrollment in his own right) under this part since his first opportunity or for the 5 years immediately preceding his retirement, whichever is shorter, may register to enroll within 31 days after the termination of the covering enrollment, other than by cancellation.

(4) An employee who is not enrolled, but is covered by the enrollment of another enrollee under this part, may register to be enrolled in the same plan and option within 31 days after cancellation of the other's enrollment. If the employee is not eligible to enroll

in the plan from which coverage is lost, he or she may enroll in the same option of any available plan.

(h) *Move from area served by comprehensive medical plan.* If a comprehensive medical plan limits full service to a geographic area, an employee, annuitant, or former spouse enrolled in that plan who moves outside the full service area or, if already living outside the full service area, moves further from the full service area, may register at any time after the move, to be enrolled in another health benefits plan.

(i) *Termination by employee organization plan.* An employee, annuitant, or former spouse who is enrolled in a health benefits plan sponsored or underwritten by an employee organization and whose membership in the employee organization is terminated, may register to be enrolled in another plan under the following conditions:

(1) Health benefits enrollment is terminated by the plan; and,

(2) Registration to enroll in another plan is submitted within 31 days after termination of enrollment in the employee organization plan.

The employee, annuitant, or former spouse may not change enrollment from self alone to self and family under this paragraph.

(j) *Transfer to or from overseas post of duty.* An employee who is transferred from a post of duty within the several States or the District of Columbia to a post of duty outside the several States and the District of Columbia, or the reverse, may register to be enrolled or to change his enrollment with respect to whether his family is covered, or the health benefits plan or option in which he is enrolled, or both, within the period beginning 31 days before the date he leaves the old post of duty and ending 31 days after he arrives at the new post of duty. An annuitant who is eligible to continue health benefits may register to change enrollment with respect to whether his family is covered, or the health benefits plan or option in which enrolled, or both, within 60 days after retirement or the death of the employee on whose service title to annuity is based, if the employee is stationed at a post of duty outside the several States and the District of Columbia at the time of his retirement or death, as the case may be.

(k) *Termination of plan in which enrolled.* If a plan is discontinued in whole or part, each employee, annuitant, and former spouse whose enrollment is thereby terminated may enroll in another plan. If the discontinuance is at the end of a contract period which is immediately preceded by an open season, the time for enrollment is the open season. Otherwise, OPM will establish a time and effective date for enrollment. Persons who fail to change enrollment within the time set are considered to have canceled the plan in which enrolled, except that if one option of a plan is discontinued, enrolled employees, annuitants, and former spouses who do not change plans will be considered enrolled in the remaining option of the plan.

(l) *Loss of coverage under parent's non-Federal plan.* An employee who is not registered to be enrolled may register to be enrolled within 31 days after he/she loses coverage under his/her parent's non-Federal health plan for a reason other than death and within 60 days after loss of coverage because of the parent's death.

(m) *On return from a uniformed service.* An employee who enters on duty in a uniformed service for a period of time not limited to 30 days or less may register to be enrolled or to change his enrollment within 31 days after he is restored to a civilian position pursuant to Part 353 of this chapter or other similar authority; and an annuitant who enters on duty in a uniformed service for a period of time not limited to 30 days or less may register to change his enrollment within 31 days after he is separated from the uniformed service.

(n) *On becoming eligible for coverage under Title XVIII of the Social Security Act.* An enrolled employee, annuitant, or former spouse with a high option enrollment may register, at any time after the 31st day before he or she is eligible for coverage under Title XVIII of the Social Security Act (Medicare), to change enrollment to the low option of any available plan under this part.

(o) *Change in employment status.* If an employee or annuitant is entitled to provide coverage for another by a self-and-family enrollment, but both are enrolled for self alone, he may change his enrollment to self and family within 31 days after the other enrollment is terminated by a change in employment status which results in loss of eligibility.

(p) *Sole survivor.* When an employee or annuitant enrolled for self and family dies, leaving a survivor annuitant who is entitled to continue the enrollment in a health benefits plan, and it is apparent from available records that the survivor annuitant is the sole survivor entitled to continue enrollment in the health benefits plan, the office of the retirement system which is acting as employing office shall change the enrollment from self and family to self alone, effective on the commencing date of annuity for the survivor annuitant. On request of the survivor annuitant made within 31 days after the first installment of annuity is paid, the office of the retirement system which is acting as employing office shall rescind the action retroactive to the effective date of the action, with corresponding adjustment in withholdings and contributions.

(q) *Annuity insufficient to pay withholdings.* If the annuity of an annuitant or of all annuitants in a family is not sufficient to pay the withholdings for the plan in which the annuitants are enrolled, the employing office shall notify the annuitant of the plans available at a cost not in excess of the annuity. The annuitant may register to be enrolled in another plan whose cost is no greater than his annuity.

(r) *Registration by proxy.* In the discretion of the employing office, a representative of the employee or annuitant having a written authorization to do so may register for him.

(s) *Survivor annuity restored.* A surviving spouse who was covered by a health benefits enrollment under this part immediately before his or her survivor annuity was terminated because of remarriage, and whose survivor annuity is later restored, may register to enroll in a health benefits plan under this part within 60 days after the mailing by OPM of a notice of eligibility and registration forms.

(t) *Loss of medicaid coverage.* An employee who is not enrolled, but is covered by medicaid (State program of medical assistance for the needy), may register to be enrolled within 31 days after termination of medicaid.

(u) *Child's coverage ends.* An employee, annuitant, or former spouse may register to change enrollment from self alone to self and family within 31 days after an eligible child loses coverage under another enrollment under this part.

(v) *Change to part-time career employment.* An enrolled employee who moves, without a break in service or after a separation of 3 days or less, to "part-time career employment" as defined in section 3401(2) of title 5, United States Code, and 5 CFR Part 340, Subpart B, may change to any other plan or option. This change in enrollment may be made within 31 days after the change to "part-time career employment."

(w) *Election between survivor annuities.* A surviving spouse, irrespective of whether his or her survivor annuity continued or was terminated upon remarriage, who was covered by a health benefits enrollment under this part immediately before his or her remarriage, may elect to continue a health benefits enrollment under this part acquired by virtue of the remarriage or to enroll in his or her own right in the plan under which he or she was previously covered under this part within 60 days after the termination of the remarriage and entitlement to a survivor annuity.

(x) *Directed reassignment from commuting area.* (1) An employee whose reassignment is directed out of the commuting area and who loses coverage under a spouse's non-Federal enrollment because the non-federally employed spouse terminates his/her employment to accompany the Federal employee, may register to enroll within the period beginning 31 days before the date he/she leaves employment in the old commuting area and ending 31 days after entry on duty at the place of employment in the new commuting area.

(2) An employee whose reassignment is directed out of the commuting area and whose spouse loses non-Federal coverage when he/she terminates non-Federal employment to accompany the Federal employee, may change enrollment from self only to self and family within the period beginning 31 days before the date he/she leaves employment in the old commuting area and ending 31 days after entry on duty at the place of employment in the new commuting area.

(y) *Loss of coverage under spouse's non-Federal plan.* (1) An employee who loses coverage under a spouse's non-Federal enrollment because the non-federally employed spouse was involuntarily separated from his/her employment because of a lay-off, may register to enroll within the period beginning 31 days before and ending 31 days after the spouse's employment terminates.

(2) An employee whose spouse loses non-Federal coverage because the non-federally employed spouse was involuntarily separated from his/her employment because of a lay-off, may change enrollment from self only to self and family within the period beginning 31 days before and ending 31 days after the spouse's employment terminates.

(z) *Disability annuity restored.* A disability annuitant who was enrolled in a health benefits plan under this immediately before his or her disability annuity was terminated because of restoration to earning capacity or recovery from disability, and whose disability annuity is restored under section 8337(e) of title 5, United States Code, after December 31, 1983, may register to enroll in a health benefits plan under this part within 60 days after OPM mails a notice of insurance eligibility and registration form.

(5 U.S.C. 8905(b))

[33 FR 12510, Sept. 4, 1968, as amended at 41 FR 52043, Nov. 26, 1976; 43 FR 52460, Nov. 13, 1978; 44 FR 57382, Oct. 5, 1979; 46 FR 25596, May 8, 1981; 47 FR 14871, Apr. 6, 1982; 49 FR 1046, Jan. 9, 1984; 50 FR 24758, June 13, 1985; 50 FR 42006, Oct. 17, 1985]

§ 890.302 Coverage of family members.

(a) *Family enrollment.* An employee or annuitant who enrolls for self and family includes in his enrollment all members of his family who are eligible to be covered by his enrollment, but no person may be covered by two enrollments.

(b) *Proof of dependency.* (1) A child is considered to be dependent on an enrolled employee or annuitant if he or she is:

(i) A legitimate child;

(ii) An adopted child;

(iii) A stepchild, foster child, or recognized natural child who lives with the enrolled employee or annuitant in a regular parent-child relationship.

(iv) A recognized natural child for whom a judicial determination of support has been obtained; or

(v) A recognized natural child to whose support the enrolled employee or annuitant makes regular and substantial contributions.

(2) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support of a natural child who does not live with the employee or annuitant in a regular parent-child relationship and for whom a judicial determination of support has not been obtained.

(i) Evidence of eligibility as a dependent child for benefits under other State or Federal programs;

(ii) Proof of inclusion of the child as a dependent on the enrolled employee's or annuitant's income tax returns;

(iii) Cancelled checks, money orders, or receipts for periodic payments from the enrolled employee or annuitant for or on behalf of the child;

(iv) Evidence of goods or services which show regular and substantial contributions of considerable value;

(v) Any other evidence which OPM shall find to be sufficient proof of support or of paternity or maternity.

(c) *Exceptions.* Coverage as a family member may be denied:

(1) If evidence shows that the employee or annuitant did not recognize the child as his or her own, despite a willingness to support the child, or

(2) If evidence calls the child's paternity or maternity into doubt, despite the employee's or annuitant's recognition and support of the child.

(d) *Child incapable of self-support.* When an employee, annuitant, or former spouse enrolls for a family which includes a child who has become 22 years of age and is incapable of self-support, the employing office will require such enrollee to submit a physician's certificate verifying the child's disability. The certificate must—

(1) State that the child is incapable of self-support because of a physical or mental disability that existed before the child became 22 years of age and that can be expected to continue for more than 1 year;

(2) Include a statement of the name of the child, the nature of the disability, the period of time it has existed, and its probable future course and duration; and,

(3) Be signed by the Physician and show the physician's office address. The employing office will require the employee, annuitant, or former spouse to submit the certificate on or before the date the child becomes 22 years of age. However, the employing office may accept otherwise satisfactory evidence of incapacity not timely filed.

(e) *Renewal of certificates of incapacity.* The employing office will require the employee, annuitant, or former spouse who has submitted a certificate of incapacity to renew that certificate on the expiration of the minimum period of disability certified.

(f) *Determination of incapacity.* The employing office shall make determinations of incapacity.

(g) *Meaning of unmarried.* A child who has never married or whose marriage has been annulled, or a child who is divorced or widowed is considered to be unmarried.

(Pub. L. 96-179)

[33 FR 12510, Sept. 4, 1968, as amended at 43 FR 52460, Nov. 13, 1978; 45 FR 76088, Nov. 18, 1980; 46 FR 35082, July 7, 1981; 49 FR 1047, Jan. 9, 1984; 50 FR 24759, June 13, 1985]

§ 890.303 Continuation of enrollment.

(a) *On transfer.* Except as otherwise provided by this part, the registration of an employee or annuitant eligible to continue enrollment continues without change when he (1) moves from one employing office to another, without a break in service of more than 3 days, whether the personnel action is designated as a transfer or not, or (2) changes from one employing office to another by reason of reeemployment, if he is an annuitant, or by reason of retirement under conditions making him eligible to continue enrollment. For the purpose of this part, an employee is considered to have enrolled at his first opportunity if he registered to be enrolled during the first of the periods set forth in § 890.301 in which he was eligible to register or was covered at that time by the enrollment of another employee, or registered to be enrolled effective not later than December 31, 1964.

(b) *Change of enrolled employees to certain excluded positions.* Employees and annuitants enrolled under this part who move, without a break in service or after a separation of 3 days or less, to an employment in which they are excluded by § 890.102(c), continue to be enrolled so long as they are employed, unless excluded by paragraphs (4), (5), (6), or (7) of § 890.102(c).

(c) *On death.* The enrollment of a deceased employee or annuitant who is enrolled for self and family is transferred automatically to his eligible survivor annuitants. The enrollment is considered to be that of the survivor annuitant from whose annuity all or the greatest portion of the withholding for health benefits is made. It covers members of the family of the deceased employee or annuitant. A remarried spouse is not a member of the family of the deceased employee or annuitant unless annuity under section 8341 of title 5, United States Code continues after remarriage.

(d) *Survivor annuitants.* If an employee who is entitled to health benefits coverage as a survivor annuitant elects to enroll or to continue to be enrolled under his eligibility as an employee, and is thereafter separated without entitlement to continued enrollment based on his own service, he is entitled to reinstatement of his employee-acquired enrollment on application to his retirement office. Reinstatement is effective immediately after termination of his employee-acquired enrollment if the application is received by the retirement office within 60 days of separation; otherwise reinstatement is effective on the first day of the first pay period after receipt of the application. The retirement office shall withhold from the annuity that the former employee receives as a survivor annuitant, the amounts necessary to pay his share of the cost of the enrollment.

(e) *In nonpay status.* (1) Except as otherwise provided by law, the enrollment of an employee continues while he/she is in nonpay status for up to 365 days. The 365 days' nonpay status may be continuous or broken by periods of less than 4 consecutive months in pay status. If an employee has at least 4 consecutive months in pay status after a period of nonpay status he/she is entitled to begin the 365 days' continuation of enrollment anew. For the purposes of this paragraph, 4 consecutive months in pay status means any 4-month period during which the employee is in pay status for at least part of each pay period.

(2) However, in the case of an employee who is employed under an OPM approved career-related work-study program under Schedule B of at least one year's duration and who is expected to be in a pay status during not less than one-third of the total period of time from the date of the first appointment to the completion of the work-study program, his/her enrollment continues while he/she is in nonpay status so long as he/she is participating in the work-study program.

[33 FR 12510, Sept. 4, 1968, as amended at 47 FR 30962, July 16, 1982]

§ 890.304 Termination of enrollment.

(a) *Employees.* An employee's enrollment terminates, subject to the temporary extension of coverage for conversion, at midnight of the earliest of the following dates:

(1) The last day of the pay period in which he/she is separated from the service other than by retirement under conditions entitling him/her to continue his/her enrollment.

(2) The last day of the pay period in which his employment status changes so that he is excluded from enrollment.

(3) The last day of the pay period in which he dies, unless he leaves a member of the family entitled to continue enrollment as a survivor annuitant.

(4) The last day of the pay period which includes the day on which the continuation of enrollment under § 890.303(e) expires, or, if he/she is not entitled to any further continuation because he/she has not had 4 consecutive months of pay status since exhausting his/her 365 days' continuation of coverage in nonpay status, the last day of his/her last pay period in pay status.

(5) The day he is separated, furloughed, or placed on leave of absence in accordance with the provisions of Part 353 of this chapter or other similar authority for the purpose of performing duty not limited to 30 days or less in a uniformed service.

(b) *Annuitants.* (1) If the annuity of an annuitant or of all survivor annuitants in a family is not sufficient to pay the withholdings for the plan in which the annuitants are enrolled, and the annuitant does not, or cannot, elect a plan under § 890.301(q) at a cost to him not in excess of the annuity, the employing office shall terminate the annuitant's enrollment effective as of the end of the last period for which withholding was made. Each annuitant whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) An annuitant's enrollment terminates, subject to the temporary extension of coverage for conversion, at midnight of the last day of the pay period in which he dies, unless he leaves a member of the family entitled to continue enrollment as a survivor annuitant, or, if his enrollment is not terminated by death, at midnight of the earliest of the following dates:

(i) The last day of the last pay period for which he is entitled to annuity, unless he is eligible for continued enrollment as an employee in which case his enrollment continues without change.

(ii) The last day of the pay period in which his title to compensation under subchapter I of chapter 81 of title 5, United States Code, terminates, or in which he is held by the Secretary of Labor to be able to return to duty, unless he is eligible for continued enrollment as an employee or as an annuitant under a retirement system for civilian employees in which case his enrollment continues without change.

(iii) The day he enters on active duty in a uniformed service for the purpose of performing duty not limited to 30 days or less.

(c) *Coverage of members of the family.* The coverage of a member of the family of an enrolled employee or annuitant terminates, subject to the temporary extension of coverage for conversion, at midnight of the earlier of the following dates:

(1) The day on which he ceases to be a member of the family.

(2) The day the employee or annuitant ceases to be enrolled, unless the member is entitled, as a survivor annuitant, to continued enrollment, or is entitled to continued coverage under the enrollment of another.

(d) *Cancellation.* An enrolled employee or annuitant may register to cancel his enrollment at any time by filing with his employing office a properly completed health benefits registration form. The cancellation becomes effective on the last day of the pay period after the pay period in which the health benefits registration form canceling his enrollment is received by his employing office, except that the cancellation of an employee or annuitant having a monthly or 4-weekly pay period becomes effective at the end of the pay period in which the health benefits registration form is received if the form is received not less than 15 days before the end of the pay period. He and the members of his family are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract for health benefits.

[33 FR 12510, Sept. 4, 1968, as amended at 47 FR 30962, July 16, 1982]

§ 890.305 Reinstatement of enrollment after military service.

(a) The enrollment of an employee or annuitant whose enrollment was terminated because he or she entered on duty in a uniformed service for a period of time not limited to 30 days or less is reinstated automatically on the day the employee is restored to a civilian position pursuant to Part 353 of this chapter, or other similar authority, or on the day the annuitant is separated from the uniformed service, as the case may be.

(b) The enrollment of an employee whose enrollment was terminated because he or she entered on duty in a uniformed service for a period of time not limited to 30 days or less, and who retires on an immediate annuity from his or her Federal civilian position while on such duty, is reinstated automatically on the day the person is separated from the uniform service, provided he or she was covered under this part since his or her first opportunity or for the 5 years of civilian service (excluding the period of uniformed service) immediately preceding the civilian retirement, whichever is shorter.

[43 FR 52460, Nov. 13, 1978]

§ 890.306 Effective dates.

(a) *Change to self alone.* The effective date of a change of enrollment under § 890.301(f) is the first day of the first pay period after the health benefits registration form is received by the employing office, except that at the request of the employee or annuitant and upon a showing satisfactory to the employing office that there was no family member eligible for coverage by the family enrollment, the change may be made effective as of the first day of the pay period following the one in which there were no family members.

(b) *Annuitant required to change enrollment.* The effective date of an annuitant's change to a lower cost enrollment under § 890.301(p) is immediately upon termination of his prior enrollment.

(c) (1) The effective date of a change in enrollment under § 890.301(d)(2) is the first day of the first pay period which begins in January of the next following year, except that a change in enrollment for the open season ending May 28, 1982, is effective on the first day of the first pay period which begins on or after July 1, 1982.

(2) The effective date of a new enrollment under § 890.301(d)(1) is the first day of the first pay period which begins in the next following year and which follows a pay period during any

part of which the employee is in a pay status, except that the effective date of a new enrollment for the open season ending May 28, 1982, is the first day of the first pay period which begins on or after July 1, 1982, and which follows a pay period during any part of which the employee is in pay status.

(d) *Birth or addition of a child.* The effective date of a change in enrollment under § 890.301(e) made in conjunction with the birth of a child, or the addition of a child as a new family member in some other manner, is the first day of the pay period in which the child is born or becomes an eligible family member.

(e) *Belated open season registrations.* (1) When a belatedly filed open season enrollment registration or enrollment change is accepted by the employing office under § 890.301(b), it takes effect on the date required by § 890.306(c).

(f) *Restoration of disability annuity.* The effective date of enrollment under § 890.301(z) is the first day of the month after the date OPM receives the registration form.

[33 FR 12510, Sept. 4, 1968, as amended at 33 FR 12955, Sept. 13, 1968; 41 FR 52043, Nov. 26, 1976; 44 FR 25396, May 1, 1979; 47 FR 14871, Apr. 6, 1982; 49 FR 1047, Jan. 9, 1984; 49 FR 48906, Dec. 17, 1984; 50 FR 42006, Oct. 17, 1985]

§ 890.307 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation is entirely waived or suspended, the annuitant's enrollment continues for not more than 3 months (not more than 12 weeks for annuitants whose compensation under subchapter I of chapter 81 of title 5, United States Code, is paid each 4 weeks). If the waiver or suspension continues beyond this period, the annuitant's enrollment is terminated, subject to the temporary extension of coverage for conversion, effective at the end of the period. It is reinstated automatically when payment of annuity or compensation is resumed, and the employing office shall make the withholding for the period of suspension or waiver during which enrollment was continued.

(b) If suspension of annuity or compensation is because of reemployment, the reemploying office shall make the withholding currently and enrollment continues during reemployment.

Subpart D—Temporary Extension of Coverage and Conversion

§ 890.401 Temporary extension of coverage and conversion.

(a) *Thirty-one day extension and conversion.* An employee or annuitant whose enrollment is terminated other than by cancellation of the enrollment or discontinuance of his plan, in whole or part, and a member of the family whose coverage is terminated other than by cancellation of the enrollment or discontinuance of the plan under which he is covered, in whole or part, is entitled to a 31-day extension of coverage for self alone or self and family, as the case may be, without contributions by the enrolled person or the Government, during which he is entitled to exercise the right of conversion provided for by this part. A change from self and family to self alone operates as a cancellation as to the members of the family. The 31-day extension of coverage and the right of conversion for any person ends on the effective date of a new enrollment under this part which covers the person.

(b) *Continuation of benefits.* (1) Any person who has been granted a 31-day extension of coverage in accordance with paragraph (a) of this section and who is confined in a hospital or other institution for care or treatment on the 31st day of the temporary extension is entitled to continuation of the benefits of the plan during the continuance of the confinement but not beyond the 60th day after the end of the temporary extension.

(2) Any person whose enrollment has been changed from one plan to another, or from one option of a plan to the other option of that plan, unless because of the discontinuance of the plan in whole or part or pursuant to an order of the Associate Director for Compensation, and who is confined in a hospital or other institution for care

or treatment on the last day of enrollment under the prior plan or option, is entitled to a continuation of the benefits of the prior plan or option during the continuance of the confinement, but not beyond the 91st day after the last day of enrollment in the prior plan or option. The plan or option to which enrollment has been changed shall not pay benefits with respect to that person while that person is entitled to continuance of benefits under the prior plan or option.

Subpart E—Contributions and Withholdings

§ 890.501 Government contributions.

(a) The Government contribution for all plans, except those for which another contribution is set by paragraph (b) of this section, for each enrolled employee who is paid biweekly, is the amount provided in section 8906 of title 5, United States Code, plus 4 percent of that amount.

(b) The biweekly Government contribution for each employee or annuitant enrolled in a plan whose total enrollment charge is less than twice the appropriate contribution listed in paragraph (a) of this section is 50 percent of the enrollment charge.

(c) The Government contribution for annuitants and for employees who are not paid biweekly is a percentage of that fixed by paragraphs (a) and (b) of this section proportionate to the length of the pay period, rounding fractions of a cent to the nearest cent.

(d) The Government contribution for employees whose annual pay is paid during a period shorter than 52 workweeks is determined on an annual basis and prorated over the number of installments of pay regularly paid during the year.

(e) The employing office shall make a contribution for an employee for each pay period during which the enrollment continues.

[33 FR 12510, Sept. 4, 1968, as amended at 47 FR 30963, July 16, 1982]

§ 890.502 Employee withholdings and contributions.

(a) The employing office shall make the withholding required from enrolled survivor annuitants from the annuity of any surviving spouse. If that annuity is less than the withholding required, the employing office shall make the withholding to the extent necessary from the annuity of the youngest child, and, if necessary, from the annuity of the next older child, in succession, until the withholding is satisfied.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee or annuitant is responsible for payment of the employee share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings are not made but during which the enrollment of an employee or annuitant continues, he/she will incur an indebtedness due the United States in the amount of the proper employee withholdings required for that pay period.

(2) Withholdings are not required for the period between the end of the pay period in which an individual separates from service and the commencing date of an immediate annuity, if later.

(3) The employing office shall establish a method for accepting direct payment for the indebtedness from the individual before initiation of a recovery action. An individual who incurs an indebtedness under this paragraph is deemed to consent to have the full amount of the indebtedness withheld from future salary, or from any other monies owed to the employee by the Federal Government, as an indebtedness due the United States. If the indebtedness cannot be withheld in full from salary, it may be recovered from other sources normally available to the employing office for the recovery of an indebtedness due the United States.

(c) Withholding for employees whose annual pay is paid during a period shorter than 52 workweeks is determined on an annual basis and prorated over the number of installments of pay regularly paid during the year.

[33 FR 12510, Sept. 4, 1968, as amended at 47 FR 30963, July 16, 1982; 49 FR 1047, Jan. 9, 1984]

§ 890.503 Reserves.

(a) The enrollment charge consists of the rate approved by OPM for payment to the plan for each employee or annuitant enrolled, plus 4 percent, of which one part is for an administrative reserve and three parts are for a contingency reserve for the plan.

(b) The administrative reserve is credited with the one one-hundred-and-fourth of the enrollment charge set aside for the administrative reserve. The administrative reserve is available for payment of administrative expenses of OPM incurred under this part, and for such other purposes as may be authorized by law.

(c) (1) The contingency reserve for each plan is credited with (i) the three one-hundred-and-fourths of the enrollment charge set aside for the contingency reserve from the enrollment charges for employees and annuitants enrolled for that plan, (ii) amounts transferred in accordance with law from other contingency reserves and the administrative reserve, (iii) income from investment of the reserve, (iv) its proportionate share of the income from investment of the administrative reserve, and (v) any return of reserves of the plan. The preferred minimum balance for the contingency reserve is 1 month's subscription charges at the average monthly rate paid from the Employees Health Benefits Fund for the plan during the most recent contract period.

(2) Except as provided by paragraphs (c)(3) and (4) of this section, when, as of the end of a contract period, the total of all the reserves held by a carrier for the plan amounts to less than the total of the last 5 months' subscription charges paid from the fund to the carrier for the plan, the carrier is entitled to payment from the contingency reserve of the lesser of: An amount equal to the difference between the total of the last 5 months' subscription charges paid from the fund to the carrier for the plan and the total of the reserves held by the carrier for the plan, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. OPM shall authorize this payment after receipt of the accounting report for the contract period. The carrier shall credit the amount so paid to the special reserve for the plan.

(3) If more than 50 percent of the enrollees in a plan are stationed at posts of duty outside the United States, its possessions, and the Commonwealth of Puerto Rico, when the special reserve held by the carrier for the plan at the end of a contract period amounts to less than one-sixth of the last year's subscription charges paid from the fund to the carrier for the plan, the carrier is entitled to payment from the contingency reserve of the lesser of: An amount equal to the difference between one-sixth of the last year's subscription charges paid from the fund to the carrier for the plan and the total of the special reserve held by the carrier for the plan, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. OPM shall authorize this payment after receipt of the account report for the contract period. The carrier shall credit the amount so paid to the special reserve for the plan.

(4) OPM may, by agreement with the carrier, approve community rating for a comprehensive medical plan. If the contingency reserve of the carrier of a community rated plan exceeds the preferred minimum balance, the carrier may request OPM to pay to the plan a portion of the reserve not greater than the excess of the contingency reserve over the preferred minimum balance. The carrier shall state the reason for the request. OPM will decide whether to allow the request in whole or in part and will advise the plan of its decision.

(5) In addition to those amounts, if any, paid under the above subparagraphs of this paragraph, OPM may authorize such other payments from the contingency reserve as in the judgment of OPM may be in the best interest of employees and annuitants enrolled in the program. Amounts paid from the contingency reserve under this subparagraph and under the above subparagraphs of this paragraph shall be considered to be subscription charges in the year in which paid.

[33 FR 12510, Sept. 4, 1968, as amended at 37 FR 20668, Oct. 3, 1972; 43 FR 52460, Nov. 13, 1978]

§ 890.504 Disposition of contingency reserves upon reorganization or merger of plans.

Upon reorganization or merger of a plan, the surviving plan shall have credited to it the reserves of the reorganized or merged plan provided, however, if more than one plan survives, the reserves shall be divided among the surviving plans in proportion to the employees and annuitants continuing to subscribe to the surviving plans.

[44 FR 42668, July 20, 1979]

Subpart F—Transfers From Retired Federal Employees Health Benefits Program

§ 890.601 Coverage.

An annuitant (a retired employee or survivor under Part 891 of this chapter) who is enrolled, or is eligible to enroll, under the Retired Federal Employees Health Benefits Program (Part 891 of this chapter) is eligible to enroll under the Federal Employees Health Benefits Program under this part.

[39 FR 20055, June 6, 1974]

§ 890.602 Opportunity to change enrollment.

An annuitant eligible to enroll under § 890.601 may register on and after August 8, 1978.

[43 FR 35018, Aug. 8, 1978]

§ 890.603 Effective date.

The effective date of an enrollment under § 890.602 is the first day of the first pay period after the election is received by the retirement system, but not earlier than January 1, 1979.

[43 FR 35018, Aug. 8, 1978; 43 FR 38569, Aug. 29, 1978]

§ 890.604 [Reserved]

§ 890.605 Persons confined on effective date.

Benefits may not be limited for persons who, on the effective date of an enrollment under § 890.602, are confined in a hospital or institution.

[43 FR 35018, Aug. 8, 1978]

Subpart G—Benefits in Medically Underserved Areas

§ 890.701 Definitions.

For purposes of this subpart—

"*Health benefits plan*" means the Government-wide Service Benefit Plan, the Government-wide Indemnity Benefit Plan, or an employee organization plan, as described under 5 U.S.C. 8903(1), (2), and (3), respectively.

"*Medically underserved area*" includes any of the 50 States of the United States where the Office of Personnel Management determines that 25 percent or more of the residents are located in primary medical care manpower shortage areas designated pursuant to section 332 of the Public Health Service Act (42 U.S.C. 254e). The Office has determined that effective January 1, 1983, the following states are "medically underserved areas" for purposes of this subpart: Alabama, Alaska, Arkansas, Georgia, Kentucky, Mississippi, Missouri, North Carolina, North Dakota, Oklahoma, South Dakota, West Virginia, and Wyoming.

(Pub. L 96-179, 5 U.S.C. 8913)

[45 FR 48099, July 18, 1980, as amended at 45 FR 81728, Dec. 12, 1980; 47 FR 17465, Apr. 23, 1982; 48 FR 14563, Apr. 5, 1983]

§ 890.702 Payment to any licensed practitioner.

(a) Except as provided in paragraph (b) of this section, if a contract between the Office of Personnel Management and a group health insurance carrier offering a health benefits plan subject to this subpart provides for payment or reimbursement of the cost of health services for the care and treatment of a particular health condition only if such service is rendered by a certain category of practitioner, the plan must also provide benefits, up to the limits of it contract, for the same service when rendered and billed for by any other individual who is licensed under applicable State law to provide such service, if the service is provided to an enrollee of the plan in a medically underserved area as defined by this subpart.

(b) Paragraph (a) of this section only applies to health services provided before January 1, 1985, under contracts which become effective after December 31, 1979.

[45 FR 48099, July 18, 1980]

Subpart H—Benefits for Former Spouses

SOURCE: 50 FR 24759, June 13, 1985, unless otherwise noted.

§ 890.801 Introduction.

This subpart explains how former spouses of Federal employees and retirees may acquire health benefits coverage in accordance with the Civil Service Retirement Spouse Equity Act of 1984 (Pub. L. 98-615). It describes enrollment eligibility for former spouses, coverage of family members, enrollment procedures, and when health plan coverage terminates. It also informs Federal agencies how to implement the Act.

§ 890.802 Definition.

In this subpart, "Qualifying court order" means a qualifying court order as described in § 831.1704 of this title.

§ 890.803 Who may enroll.

(a) Except as specified in paragraph (b) of this section, a former spouse is eligible to enroll in a health benefits plan under this part provided that—

(1) The former spouse whose marriage to an employee or employee annuitant is dissolved has not remarried if under age 55; and

(2) The former spouse was enrolled in a health benefits plan under this part as a family member at any time during the 18 months preceding the date of the dissolution of marriage; and

(3)(i) The former spouse was married to an employee or employee annuitant on or after May 7, 1985, and currently receives, or has future title to receive, (A) a portion of annuity payable to the employee upon retirement, based on a qualifying court order for purposes of 5 U.S.C. 8345(j), (B) survivor annuity benefits based on a qualifying court order for purposes of 5 U.S.C. 8341(h), or (C) a survivor annuity elected by the employee under 5 U.S.C. 8339(j)(3) (or benefits similar to those under this paragraph under another retirement system for Government employees); *or*

(ii) The former spouse was married to an employee who retired before May 7, 1985, and the employee annuitant (A) elects before May 9, 1986, to provide a survivor annuity to the former spouse under procedures prescribed in § 831.621 of this title, or (B) does not elect to provide a survivor annuity as described in paragraph (a)(3)(ii) (A) of this section, or died on or before May 7, 1985, *and* the former spouse satisfies all of the conditions for a survivor annuity in § 831.622 of this title.

(b) A former spouse of an employee who separates from Federal service before becoming eligible for immediate annuity is eligible to enroll only if the former spouse's marriage to the employee dissolved before the employee left Federal service.

§ 890.804 Coverage.

(a) *Type of enrollment.* A former spouse who meets the requirements of § 890.803 may elect coverage for self alone or for self and family. A family enrollment covers only the former spouse and any unmarried dependent natural or adopted child of both the former spouse and the employee, former employee or employee annuitant, provided such child is not otherwise covered by a health plan under this part. An unmarried dependent child must be under age 22 or incapable of self-support because of a mental or physical disability existing before age 22. No person may be covered by two enrollments.

(b) *Proof of dependency.* (1) A child is considered to be dependent on the former spouse, or the employee, former employee, or employee annuitant if he or she is:

(i) A legitimate child;

(ii) An adopted child;

(iii) A recognized natural child who lives with the former spouse, or the employee, former employee or employee annuitant in a regular parent-child relationship.

(iv) A recognized natural child for whom a judicial determination of support has been obtained; or

(v) A recognized natural child to whose support the former spouse, or the employee, former employee, or employee annuitant makes regular and substantial contributions in accordance with § 890.302(b)(2).

(c) *Exclusions from coverage.* Coverage as a family member may be denied:

(1) If evidence shows that the former spouse, employee, former employee or annuitant did not recognize the child as his or her own, despite a willingness to support the child, or

(2) If evidence calls the child's paternity or maternity into doubt, despite the former spouse's, employee's, former employee's, or employee annuitant's recognition and support of the child.

(d) *Child incapable of self-support.* When a former spouse enrolls for a family enrollment which includes a child who has become 22 years of age and is incapable of self-support, the employing office shall determine such child's eligibility in accordance with § 890.302 (d), (e) and (f).

(e) *Meaning of unmarried.* A child, under age 22 or incapable of self-support, who has never married or whose marriage has been annulled, or a child who is divorced or widowed is considered to be unmarried.

§ 890.805 Enrollment time limitations.

(a)(1) Former spouses of employees who retire on or after May 7, 1985, must apply for coverage: (i) Within 60 days after dissolution of the marriage to the Federal employee or employee annuitant, or (ii) if the marriage dissolved after retirement, within 60 days after dissolution of the marriage or, if later, 60 days after the retired employee elects to provide a survivor annuity for the former spouse.

(2) Former spouses of employees who retire before May 7, 1985, must apply for coverage: (i) Within 60 days after the employee annuitant elects to provide a former spouse annuity under § 831.621 or (ii) within 60 days after the date of the OPM notice of entitlement to a former spouse annuity under § 831.622.

§ 890.806 Effective dates of coverage.

(a) *Generally.* The effective date of enrollment or change of enrollment is the first day of the pay period after the date of receipt by the employing office of the registration form and satisfactory proof of eligibility.

(b) *Change required because of insufficient annuity.* When a former spouse annuitant changes to a lower cost enrollment as provided by § 890.301(q) of this title, the change is effective immediately upon loss of coverage under the prior enrollment.

§ 890.807 Termination of enrollment.

(a) *Former spouse.* (1) If the annuity of a former spouse is not sufficient to pay the withholdings for the plan in which enrolled, and the former spouse annuitant does not, or cannot, elect a plan under § 890.301(q) at a cost not in excess of the annuity, the employing office will terminate the enrollment effective the end of the last period for which withholding was made. Each former spouse annuitant whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) A former spouse's enrollment terminates, subject to the temporary extension of coverage for conversion, at midnight of the last day of the pay period in which the earliest of the following events occurs:

(i) Court order ceases to provide entitlement to survivor annuity or portion of retirement annuity under a retirement system for Government employees.

(ii) Former spouse remarries before age 55.

(iii) Former spouse remarries the employee, separated employee, or annuitant on whose service the benefits are based.

(iv) Former spouse dies.

(v) Employee on whose service the benefits are based dies and no survivor annuity is payable.

(vi) Separated employee on whose service the benefits are based dies before the requirements for deferred annuity have been met.

(vii) Employee on whose service benefits are based leaves Federal service before establishing title to deferred annuity.

(viii) Refund of retirement monies is paid to the separated employee on whose service the health benefits are based.

(3) A former spouse whose enrollment is terminated under this paragraph may not reenroll.

(b) *Coverage of members of the family.* The coverage of a member of the family of a former spouse terminates, subject to the temporary extension of coverage for conversion, at midnight of the earlier of the following dates:

(1) The day on which the individual ceases to be an eligible family member.

(2) The day the former spouse ceases to be enrolled, unless the family member is entitled, as a survivor annuitant, to continued enrollment, or is entitled to continued coverage under the enrollment of another.

(c) *Cancellation.* A former spouse may cancel enrollment at any time by filing with the employing office a properly completed health benefits form. The cancellation becomes effective on the last day of the pay period after the pay period in which the health benefits form canceling the enrollment is received by the employing office. The former spouse and family members, if any, are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract for health benefits. A former spouse who cancels his or her enrollment may not later reenroll.

§ 890.808 Employing office responsibilities.

(a) *Applications for benefits.* (1) The employing office will set up a method for accepting applications for enrollment and, if the former spouse is not receiving annuity, direct payment for the former spouse. The method will include procedures for verifying the eligibility requirements under § 890.803(a) (1) and (2). The employing office will accept OPM documentation that the former spouse meets the additional requirement under § 890.803(a)(3) (i) or (ii). The employing office will maintain a health benefits file for the former spouse as a file separate from the personnel records of the employee or former employee.

(2) The application from the former spouse must be filed in a manner prescribed by OPM. The former spouse will be required to certify that he or she meets the requirements listed in § 890.803 and that he or she will notify the employing office within 31 days of an event that results in failure to meet one or more of the requirements.

(b) *Qualifying court order.* Subject to a 31-day extension period for conversion, the duration of health benefits coverage will coincide with any period specified in the qualifying court order providing for an annuity. A court order not meeting the requirements under § 831.1707(c) or § 831.1709 will not be used to establish or continue entitlement to a former spouse's health benefits coverage.

(c) *Premium payments.* (1) The former spouse must remit to the employing office the full subscription charge for the enrollment for every pay period during which the enrollment continues. Payment must be made in accordance with a schedule established by the employing office. If the employing office does not receive payment within 31 days after the due date, the employing office will notify the former spouse by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after the receipt of the notice. An individual who fails to remit payment within the specified time frame will be deemed to have cancelled his or her enrollment.

(2) The employing office will submit all premium payments collected from former spouses along with its regular health benefits payments to OPM. The full subscription charge for former spouses will be classified as "withholdings" and included in the "Withholding" section of the SF 2812, Journal Voucher and Report of Withholdings and Contributions For Health Benefits, Group Life Insurance, and Civil Service Retirement.

(d) Withholding from annuity. The retirement system acting as employing office for a former spouse will establish a method for withholding the full subscription charge from the former spouse's annuity check. When the annuity is insufficient to cover the full amount of health benefits premium due, the retirement system will require the former spouse to register to be enrolled in another plan as provided by § 890.301(q).

PART 891—RETIRED FEDERAL EMPLOYEES HEALTH BENEFITS

Subpart A—Administration and General Provisions

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891.502 Standards for carrier of uniform plan.

AUTHORITY: 80 Stat. 607; 5 U.S.C. 8913.

SOURCE: 33 FR 12516, Sept. 4, 1968, unless otherwise noted.

NOMENCLATURE NOTE: For nomenclature changes to Part 891, see 44 FR 76747, Dec. 28, 1979, and 46 FR 47209, Sept. 25, 1981.

Subpart A—Administration and General Provisions

§ 891.101 Relationship to Part 890 of this chapter.

This part does not apply to the Federal Employees Health Benefits Program which is governed by Part 890 of this chapter. Part 890 of this chapter does not apply to the Retired Federal Employees Health Benefits Program which is governed by this part.

§ 891.102 Definitions.

In this part:

(a) "Annuity" means the periodic payment due a former employee or his/her survivors by reason of past service, but does not include compensation paid under subchapter I of chapter 81 of title 5, United States Code.

(b) "Annuity period" means the period for which an installment of annuity is paid.

(c) "Bureau of Employees' Compensation" means the Bureau of Employees' Compensation, Department of Labor.

(d) "Carrier" means a voluntary association, corporation, partnership, or other nongovernmental organization which lawfully offers a health benefits plan.

(e) "Compensation" means monthly compensation paid under subchapter I of chapter 81 of title 5, United States Code, and includes compensation payable every 4 weeks.

(f) "Elect" means to file with the retirement office under which retired or with the Bureau of Employees' Compensation, as the case may be, a properly completed form, prescribed by OPM for the purpose, giving notice of intention (1) to subscribe to the uniform plan, (2) to receive a Government contribution toward the cost of a private health benefits plan, or (3) not to participate in the program.

(g) "Employee" means an appointive or elective officer or employee in or under the executive, judicial, or legislative branch of the United States Government, including a Government-owned or controlled corporation (but not including any corporation under the supervision of the Farm Credit Administration, of which corporation any member of the board of directors is elected or appointed by private interests), or of the government of the District of Columbia, and includes an Official Reporter of Debates of the Senate and a person employed by the Official Reporters of Debates of the Senate in connection with the performance of their official duties, and an employee of Gallaudet College, but does not include (1) a member of a "uniformed service" as that term is defined in section 1072 of title 10, United States Code, (2) a noncitizen employee whose permanent-duty station is located outside a State of the United States or the District of Columbia, or (3) an employee of the Tennessee Valley Authority.

(h) "Government" means the Government of the United States of America and the government of the District of Columbia.

(i) "Health benefits plan" means an individual or group insurance policy or contract, medical or hospital service arrangement, membership or subscription contract, or similar agreement provided by a carrier for a stated periodic premium or subscription charge for the purpose of providing, paying for, or reimbursing expenses for hospital care, surgical or medical diagnosis, care, and treatment, drugs and medicines, remedial care, or other medical supplies and services, or any combination of these.

(j) "Immediate annuity" means (1) as applied to a retired employee, an annuity which begins to accrue not later than 1 month after the date of the separation from the service on which title to the annuity is based; and (2) as applied to a survivor, an annuity which begins to accrue not later than 1 month (i) after the date of death of the employee or annuitant whose service forms the basis for the annuity, or (ii) after the birth of a posthumous child of such an employee or annuitant.

(k) "Member of family" means a former employee's spouse and any unmarried child (1) under 19 years of age (including (i) an adopted child, and (ii) a stepchild or recognized natural child who lives with the former employee in a regular parent-child relationship or did so at the time of the former employee's death); or (2) regardless of age who is incapable of self-support because of mental or physical disability that existed before the child became 19 years of age. As used in this paragraph, "Former employee" means the former employee on whose service title to annuity is based.

(l) "Private health benefits plan" means a health benefits plan other than the uniform plan.

(m) "Retired employee" includes (1) a former employee retired under subchapter III of chapter 83 of title 5, United States Code, or other retirement system for civilian employees of the Government (not including the social security system), (2) an employee or former employee receiving compensation under subchapter I of chapter 81 of title 5, United States Code, and (3) persons who are entitled to annuity or compensation as members of the family of a deceased employee or of a deceased retired employee qualifying under paragraphs (m) (1) and (2) of this section.

(n) "Retirement office" means (1) any office responsible for the administration of a retirement system for civilian employees of the Government; and (2) the Bureau of Employees' Compensation.

(o) "Service" means service which is creditable for the purposes of subchapter III of chapter 83 of title 5, United States Code.

(p) "Survivor" means a person who is entitled to annuity or compensation as a member of the family of a deceased employee or deceased retired employee.

(q) "Uniform plan" means the health benefits plan for which OPM contracts pursuant to section 3, 74 Stat. 849.

§ 891.103 Eligibility.

(a) *General conditions of eligibility.* (1) A retired employee who is enrolled or covered by the enrollment of another under Part 890 of this chapter, or who is covered by the election of another retired employee under this part, is ineligible to subscribe to the uniform plan or to receive a Government contribution toward the cost of a private health benefits plan.

(2) A retired employee is ineligible to subscribe to the uniform plan if his/her annuity or compensation is not sufficient to cover the necessary withholding.

(3) An annuitant who enrolled under § 890.601, and who later cancels such enrollment, is ineligible to subscribe to

the uniform plan or to receive a Government contribution toward the cost of a private health benefits plan.

(b) *Retired employees (other than survivors) entitled to annuity.* A retired employee (other than a survivor) who is entitled to an annunity is eligible for the benefits provided by this part if—

(1) He/She retired before his/her first pay period beginning after June 30, 1960;

(2) He/She retired on immediate annuity;

(3) He/She had at least 12 years of creditable service, or retired under a disability provision of his/her retirement system;

(4) He/She retired from employment which was not in the Tennessee Valley Authority or in a corporation under the supervision of the Farm Credit Administration, of which corporation any member of the board of directors was elected or appointed by private interests; and

(5) At the time of retirement, he/she was a citizen, or a noncitizen having a permanent-duty station within the several States or the District of Columbia on the day before retirement.

For the purpose of this paragraph, an employee is considered to have retired before his/her first pay period beginning after June 30, 1960, if his/her annuity began to accrue before his/her first pay period after June 30, 1960, or if he/she was eligible under paragraph (d) of this section until the date his/her annuity began to accrue.

(c) *Survivors entitled to annuity.* A survivor who is entitled to annuity is eligible for the benefits provided by this part if he/she is:

(1) In receipt of immediate annuity as the survivor of (i) an employee who died before his/her first pay period beginning after June 30, 1960; or (ii) a retired employee whose annuity began to accrue before his/her first pay period beginning after June 30, 1960;

(2) The survivor of (i) an employee who had at least 5 years' creditable service, (ii) a former employee who retired having at least 12 years' creditable service and received an immediate annuity, or (iii) a former employee who retired under a disability provision of his/her retirement system; and

(3) Not receiving annuity as the survivor of a person who at the time of the retirement or death, as the case may be, on which annuity is based, was an employee of the Tennessee Valley Authority or of any corporation under the jurisdiction of the Farm Credit Administration of which corporation any member of the board of directors was elected or appointed by private interests, or was a noncitizen having a permanent-duty station outside the several States and the District of Columbia.

(d) *Retired employees (other than survivors) entitled to compensation.* A retired employee (other than a survivor) who is entitled to compensation is eligible for the benefits provided by this part if—

(1) He/She is receiving monthly compensation for an injury sustained or illness contracted before his/her first pay period beginning after June 30, 1960;

(2) He/She is held by the Secretary of Labor to be unable to return to duty;

(3) He/She is receiving compensation based on employment which was not in the Tennessee Valley Authority or in a corporation under the supervision of the Farm Credit Administration, of which corporation any member of the board of directors was elected or appointed by private interests; and

(4) At the time of sustaining the injury or contracting the illness, as the case may be, on which compensation is based, he/she was a citizen, or a noncitizen having a permanent-duty station within the several States or the District of Columbia at that time.

(e) *Family members entitled to compensation.* A member of a family who is receiving compensation is eligible for the benefits provided by this part if he/she is:

(1) A survivor beneficiary of (i) an employee who completed 5 years of service and died as a result of injury or illness which is compensable under subchapter I of chapter 81 of title 5, United States Code, and which was sustained or contracted before his/her first pay period beginning after June 30, 1960, or (ii) a former employee who was separated after having completed

at least 5 years of service and who died while receiving monthly compensation under that subchapter on account of injury sustained or illness contracted before his/her first pay period beginning after June 30, 1960, and who has been held by the Secretary of Labor to have been unable to return to duty; and

(2) Not receiving compensation as the survivor of a person who at the time of sustaining the injury or contracting the illness, as the case may be, on which compensation is based, was an employee of the Tennessee Valley Authority or of any corporation under the jurisdiction of the Farm Credit Administration of which corporation any member of the board of directors was elected or appointed by private interests, or was a noncitizen having a permanent-duty station outside the several States and the District of Columbia.

(f) *Determinations of eligibility.* The Associate Director for Compensation of OPM, on request, shall determine the eligibility of a retired employee, or class of retired employees, to make the elections and receive the Government contributions provided for by this part.

[33 FR 12516, Sept. 4 1968, as amended at 43 FR 35018, Aug. 8, 1978]

§ 891.104 Responsibilities of retirement offices.

(a) The Office of Worker's Compensation Program is responsible only for retired employees who are receiving compensation from the Office and is responsible even though the retired employee has retired under another retirement office from which he/she is not currently receiving annuity. If the retired employee is currently receiving annuity from another retirement office, that retirement office, rather than the Office of Worker's Compensation Program, will have the responsibilities imposed on retirement offices by this part for that retired employee.

(b) Retirement offices are responsible, in accordance with regulations and instructions issued by OPM, for withholding from the annuity or compensation of each retired employee within the jurisdiction of the retirement office who elects to subscribe to the uniform plan his/her share of the cost, for forwarding the amount withheld to the Retired Federal Employees Health Benefits Fund, and for reporting to OPM amounts required for Government contribution for these retired employees.

(c) Retirement offices are responsible, in accordance with regulations and instructions issued by OPM, for reporting to OPM amounts required for Government contributions to retired employees within the jurisdiction of the retirement office who have elected to receive a Government contribution toward the cost of a private health benefits plan, and for paying the Government contributions to these retired employees.

(d) Retirement offices are responsible for advising retired employees within the jurisdiction of the retirement office of the rights and obligations of retired employees under this part.

(e) When one or more of the family members is a child 19 years of age or older who is incapable of self-support because of mental or physical disability which existed before the child became 19 years of age, the appropriate retirement office shall obtain the necessary evidence and make a determination of incapacity.

(f) Retirement offices are responsible, in accordance with regulations and instructions issued by OPM, for verifying continuing eligibility of retired employees to receive Government contributions.

§ 891.105 Correction of errors.

OPM may order correction of administrative errors at any time upon a showing satisfactory to OPM that it would be against equity and good conscience not to do so.

[45 FR 23637, Apr. 8, 1980]

§ 891.106 Reconsideration.

(a) *Who may file.* A retired employee may request OPM to reconsider its initial decision that he/she is not eligible to make an election or to receive a Government contribution under the part or that he/she may not enroll another individual as a family member.

(b) *Initial OPM decision.* An OPM decision shall be considered an initial decision as used in § 891.106(a) of this part, when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration.

(c) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number, if appropriate, and reasons for the request.

(d) *Time limit.* A request for reconsideration of an initial OPM decision must be filed within 30 calendar days from the date of OPM's initial decision. OPM may extend the time limit on filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(e) *Final decision.* After reconsideration, OPM shall issue a final decision which shall be in writing and shall fully set forth the findings and conclusions of OPM.

[45 FR 23637, Apr. 8, 1980]

Subpart B—Election and Change of Election

§ 891.201 Election.

(a) The original period for election by each eligible retired employee was during the months of March and April 1961. Failure to elect when eligible to do so is deemed an election not to participate in the program unless the failure is determined by the retirement office to be for cause beyond the control of the retired employee. In any case in which annuity or compensation is being paid to a payee in behalf of a retired employee, the payee shall make the election for the retired employee.

(b) (1) A retired employee may elect to participate in the program for self alone or for self and family.

(2) Survivors, if actually or constructively living in the same household, have only one right of election among them. The election shall be made by the payee. The fact that one payee is receiving annuity or compensation for all members of the family is prima facie evidence that they are living in the same household. The existence of more than one payee is prima facie evidence that each payee and the survivors in whose behalf the payee is receiving annuity or compensation constitute a separate household, and each payee may elect for the survivors in whose behalf he is receiving annuity or compensation, but where a family is receiving annuity or compensation through more than one payee, one payee, with the consent of the other payees, may elect for the whole family.

(3) A retired employee may not be covered under more than one election.

(4) A retired employee who is entitled to more than one annuity or to compensation and annuity is entitled to only one election.

(c) Each retired employee who elects to receive a Government contribution toward the cost of a private health benefits plan shall file with his election a certificate of the carrier, on the form prescribed by OPM for the purpose, that he is a subscriber to a health benefits plan. OPM, or the appropriate retirement office, at any time may require that a retired employee renew the certificate, or may take such other action as it considers desirable to verify the continuing eligibility of the retired employee to receive a Government contribution. The appropriate retirement office may suspend the Government contribution when there is a reasonable doubt of the retired employee's continuing eligibility to receive the Government contribution.

(d) In the discretion of the retirement office, a representative of the retired employee having a written authorization to do so may elect for him.

(e) A person who was not eligible, during the months of March and April 1961, to elect to subscribe to the uniform plan or to receive a Government contribution toward the cost of a private health benefits plan, may apply to the appropriate retirement office when he becomes eligible. If the retirement office determines that he is eligible, it shall notify the retired employee that he is eligible to make an election in accordance with paragraphs (a) to (d) of this section within 60 days of the date of the notice. If the retirement office determines that a retired employee was unable, for cause beyond his control, to make an election within the time limits prescribed by this section, it shall notify the retired employee that he is eligible to make an election in accordance with paragraphs (a) to (d) of this section within 60 days of the date of the notice. Elections made under this paragraph are effective, for a retired employee receiving annuity and a survivor receiving compensation, on the first day of the third month following the month in which the retirement office receives the election. Withholdings and contributions are effective for months beginning on and after the first day of the second month following the month in which the retirement office receives the election. For any other retired employee receiving compensation, changes of election made under this paragraph are effective on the first day of the third 4-week period following the 4-week period in which the Bureau of Employees' Compensation receives the election, and withholdings and contributions are effective beginning with the second 4-week period following receipt of the election. This paragraph does not apply to retired employees who have been, at any time, covered by the election of another under this part.

(f) Retired employees and survivors who, on January 1, 1973, were enrolled for either basic coverage only or major medical coverage only of the Uniform Plan are, effective January 1, 1973, automatically enrolled in basic plus major medical coverage of the Uniform Plan.

[33 FR 12516, Sept. 4, 1968, as amended at 37 FR 20845, Dec. 20, 1972]

§ 891.202 Change of election.

(a) When used in this section, "month" includes the 4-week period for which a retired employee (other than a survivor) receives compensation.

(b) A retired employee shall change his election in accordance with the following table:

TABLE OF REQUIRED CHANGES

Event requiring change	Type of election to which requirement applies	Change required	Effective date of change
(1) Loss of member of family by death or otherwise, leaving only one person covered by the election.	Election for self and family for uniform or private health benefits plan.	Change to self alone	First day of month following the event requiring change. Changes in withholdings and contributions are effective for annuity or compensation accruing for the month in which the event requiring change occurs.
(2) Termination of subscription to a private health benefits plan for all persons covered by the election but the retired employee making the election [1].	Election for self and family for private health benefits plan.	do	Do.
(3) Termination of subecription to a private health benefits plan for all persons covered by the election [1].	Election for self alone or for self and family for private health benefits plan.	Change to not participating (optional change may be made in accordance with paragraph (c) of this section).	Do.

[1] If the termination is immediately succeeded by a similar subscription in another private health benefits plan a change of election is not required, but the retired employee shall file a certificate of the new carrier that he is a subscriber. A form for the certificate may be obtained from the retirement office.

(c) An annuitant may change his or her election in accordance with the following table by notifying his or her retirement system at any time:

TABLE OF OPTIONAL CHANGES

Change permitted	Type of election from which changing	Effective date of change
(1) Change to not participating	Election for self alone or self and family for uniform or private health benefits plan.	First day of month specified in notice to retirement system, or first day of month following receipt of notice by retirement system, whichever is later. Changes in withholdings and contributions are effective for annuity or compensation accruing for the month preceding the effective date of the change.
(2) Change to self alone in same plan.	Election for self and family for uniform plan or private health benefits plan.	Do.
(3) Change to private health benefits plan for self alone or self and family.	Election for self alone or self and family for uniform plan.	Do.
(4) Change to self and family in same plan.	Election for self alone for uniform or private health benefits plan.	First day of fourth month following the month in which notice is received by retirement system. Changes in withholdings and contributions are effective for annuity or compensation accruing for the third month following month in which notice is received by the retirement system.
(5) Change to self alone or self and family for uniform plan or private health benefits plan.	Election not to participate	Do.

[33 FR 12516, Sept. 4, 1968, as amended at 43 FR 35018, Aug. 8, 1978]

Subpart C—Suspension and Termination

§ 891.301 Suspension and termination.

(a) When used in this section, "month" includes the 4-week period for which a retired employee (other than a survivor) receives compensation.

(b) When compensation is entirely suspended or annuity is entirely waived or suspended, Government contributions are suspended. If the election is to subscribe to the uniform plan, and the annuity or compensation is suspended, or the annuity is waived to the extent that the retired employee's share of the cost cannot be withheld, withholdings and Government contributions are suspended, but the subscription continues.

(c) If the waiver or suspension covers 3 months or less, Government contributions and withholdings for the period of waiver or suspension shall be made when annuity payment is resumed. If the waiver or suspension covers more than 3 months, the retired employee's election is terminated effective at the end of the third month of waiver or suspension. A terminated election is renewed when annuity or compensation payment is resumed. When a terminated election is renewed pursuant to this paragraph, withholdings and Government contributions shall be made for the first 3 months of the waiver or suspension. Withholdings and Government contributions shall be made for annuity or compensation accruing after the election is renewed.

(d) If title of a retired employee to annuity or compensation is terminated, his eligibility under this part is terminated.

(e) If the eligibility of a retired employee is terminated and other members of the same family continue to be eligible under this part, the election of the former retired employee continues for the remainder of the family unless and until changed in accordance with § 891.202.

Subpart D—Contributions and Withholdings

§ 891.401 Government contributions.

(a) *For retired employees and survivors receiving an annuity.*

(1) Each month, an amount equal to the current monthly premium paid by an individual for supplementary medi-

cal insurance under title XVIII of the Social Security Act (Medicare) for such month shall be paid by the Office of Personnel Management, through the appropriate retirement office, to each retired employee or survivor who:

(i) Is in receipt of annuity for such month;

(ii) Is eligible for coverage under this part; and

(iii) Elects to receive a Government contribution toward his or her cost of coverage for:

(A) A private health insurance plan in which he or she is a subscriber for self-only; or

(B) Supplementary medical insurance under Medicare.

(2) Each month, an amount equal to the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) for such month shall be contributed, by the Office of Personnel Management, for each retired employee or survivor who is in receipt of annuity and who has elected to enroll for self-only in the uniform plan.

(3) Each month, an amount equal to twice the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) for such month shall be paid by the Office of Personnel Management, through the appropriate retirement office, for each retired employee or survivor who:

(i) Is in receipt of an annuity for such month;

(ii) Is eligible for coverage under this part; and

(iii) Elects to receive a Government contribution toward the cost of coverage for self and family under:

(A) A private plan or plans; or

(B) Supplementary medical insurance under Medicare.

(4) Each month, an amount equal to twice the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) for such month shall be contributed, by the Office of Personnel Management, for each retired employee or survivor who is in receipt of annuity and who has elected to enroll for self and family in the uniform plan.

(b) *For retired employees and survivors receiving compensation.*

(1) For each retired employee or survivor who is in receipt of compensation and who meets the requirements of paragraph (a)(1) of this section, other than the requirement of being in receipt of an annuity, the Office of Personnel Management shall contribute, through the Office of Workers' Compensation Programs, an amount equal to 93⅓ percent of the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) rounded to the nearest cent, counting one-half cent and over as a whole cent, for each 4-week period in which payment of such compensation is made.

(2) For each retired employee or survivor who is in receipt of compensation and who has elected to enroll for self-only in the uniform plan, the Office of Personnel Management shall contribute, during each 4-week period in which payment of such compensation is made, an amount equal to 93⅓ percent of the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) rounded to the nearest cent, counting one-half cent and over as a whole cent.

(3) For each retired employee or survivor who is in receipt of compensation and who meets the requirements of paragraph (a)(3) of this section, other than the requirement of being in receipt of an annuity, the Office of Personnel Management shall contribute, through the Office of Workers' Compensation Programs, an amount equal to 186⅔ percent of the current monthly premium paid by an individual for supplementary medical insurance under title XVIII of the Social Security Act (Medicare) rounded to the nearest cent, counting one-half cent and over as a whole cent, for each 4-week period in which payment of such compensation is made.

(4) For each retired employee or survivor who is receiving compensation and has elected to enroll for self and family in the uniform plan, the Office

of Personnel Management shall contribute, during each 4-week period in which payment of such compensation is made, an amount equal to 186⅔ percent of the current monthly premium paid by an individual for supplementary insurance under title XVIII of the Social Security Act (Medicare) rounded to the nearest cent, counting one-half cent and over as a whole cent.

(5) If the current monthly rate for supplementary medical insurance under Medicare changes to a new rate within a 4-week period in which compensation is paid, the amount to be contributed for that 4-week period will be a prorated amount determined by:

(i) Multiplying the number of days in the 4-week pay period occurring at the former monthly rate (the rate in effect at the beginning of the pay period) by the former rate for a 4-week pay period;

(ii) Multiplying the number of days in the 4-week pay period occurring at the new rate (the rate in effect at the end of the 4-week pay period) by the new 4-week rate;

(iii) Adding the products of paragraphs (b)(5) (i) and (ii) of this section; and

(iv) Dividing the sum by 28 and rounding to the nearest cent, counting one-half cent and over as a whole cent.

(c) So that the Government contribution provided under this section is paid or contributed in advance, it shall be included in the payment of annuity or compensation for the month or pay period immediately preceding the month or pay period for which the Government contribution is due.

(d) An election to subscribe to the uniform plan constitutes an agreement by the retired employee or survivor that the retirement office may withhold from his or her annuity or compensation his or her share of the cost of the plan, as provided by this part.

(e) The Government shall contribute to the Retired Federal Employees Health Benefits Fund two percent of the total Government contribution authorized by this section for payment of expenses incurred by the Office of Personnel Management in administering this part.

[45 FR 30611, May 9, 1980]

§ 891.402 Withholdings.

The appropriate retirement office shall withhold from the annuity or compensation of each of its retired employees who has elected to subscribe to the uniform plan so much as is necessary to pay his share of the cost of his subscription. The withholdings shall be forwarded, in accordance with OPM instructions, to the Retired Employees Health Benefits Fund.

Subpart E—Standards for Uniform Plan and Carrier

§ 891.501 Standards for uniform plan.

The uniform plan shall be open to all eligible retired employees and members of their families, without regard to race, sex, health status, or age. It shall not deny or limit benefits because of any preexisting condition. It shall offer basic plus major medical coverage. It shall provide a 31-day extension of coverage on termination of subscription other than by change of election or termination of the contract. A person confined in hospital for care or treatment on the 31st day of the extension of coverage shall be entitled to continuation of the benefits of the contract during the continuance of the confinement, but not beyond the 60th day following the end of the extension of coverage. The uniform plan shall be experience-rated.

[33 FR 12516, Sept. 4, 1968, as amended at 43 FR 35018, Aug. 8, 1978]

§ 891.502 Standards for carrier of uniform plan.

In the most recent year for which data are available, the carrier of the uniform plan shall have made at least 1 percent of all group health insurance benefit payments in the United States. If the carrier is an insurance company, it must be licensed to issue group health insurance in all the States of the United States and the District of Columbia.

PART 900—INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

NOMENCLATURE CHANGE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subparts A-C—[Reserved]

Sec.

Subpart D—Nondiscrimination in Federally Assisted Programs in the Office of Personnel Management—Effectuation of Title VI of the Civil Rights Act of 1964

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Subpart G—Nondiscrimination on the Basis of Handicap in Federally Assisted Programs of the Office of Personnel Management

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900.701 Purpose.
900.702 Applicability.
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900.705 Program accessibility.
900.706 Employment practices.
900.707 Certification required.
900.708 Self-evaluation.
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900.710 Procedure for effecting compliance.

AUTHORITY: Sec. 503, Pub. L. 91-648, 84 Stat. 1926 (42 U.S.C. 4763), unless otherwise noted.

SOURCE: 36 FR 15515, Aug. 17, 1971, unless otherwise noted.

Subparts A-C—[Reserved]

Subpart D—Nondiscrimination in Federally Assisted Programs in the Office of Personnel Management—Effectuation of Title VI of the Civil Rights Act of 1964

AUTHORITY: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1).

SOURCE: 38 FR 17920, July 5, 1973, unless otherwise noted.

§ 900.401 Purpose.

The purpose of this subpart is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as Title VI) to the end that a person in the United States shall not, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under a program or activity receiving Federal financial assistance from OPM.

§ 900.402 Application of this subpart.

(a) This subpart applies to each program for which Federal financial assistance is authorized under a law administered by OPM, including the federally assisted programs listed in Appendix A to this subpart. It also applies to money paid, property transferred, or other Federal financial assistance extended under a program after the effective date of this subpart pursuant to an application approved before that effective date. This subpart does not apply to:

(1) Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended under a program before the effective date of this subpart, except when the assistance was subject to the Title VI regulations of an agency whose responsibilities are now exercised by OPM;

(3) Assistance to any individual who is the ultimate beneficiary under a program; or

(4) Employment practices, under a program, of an employer, employment agency, or labor organization, except to the extent described in § 900.404(c).

The fact that a program is not listed in Appendix A to this subpart does not mean, if Title VI is otherwise applicable, that the program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to Appendix A to this subpart.

(b) In a program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under that property are included as part of the program receiving that assistance, the nondiscrimination requirement of this subpart extends to a facility located wholly or in part in that space.

§ 900.403 Definitions.

Unless the context requires otherwise, in this subpart:

(a) "Applicant" means a person who submits an application, request, or plan required to be approved by OPM, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means that application, request, or plan.

(b) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(c) "Federal financial assistance" includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in the property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale or lease to the recipient; and

(5) A Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) "Primary recipient" means a recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) "Program" includes a program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training or other services whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance are deemed to include a service, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet the matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or non-Federal resources.

(f) "Recipient" may mean any State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual in any State, the District of Columbia, the Commonwealth of Puerto Rico, or territory or possession of the United States, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but the term does not include any ultimate beneficiary under a program.

(g) "Director" means the Director of the Office of Personnel Management, or any person to whom he has delegated his authority in the matter concerned.

§ 900.404 Discrimination prohibited.

(a) *General.* A person in the United States shall not, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or obe otherwise subjected to discrimination under, a program to which this subpart applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under a program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin—

(i) Deny a person a service, financial aid, or other benefit provided under the program;

(ii) Provide a service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of a service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of an advantage or privilege enjoyed by others receiving a service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies an admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided a service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under a program or the class of persons to whom, or the situations in which, the services, financial aid, other benefits, or facilities will be provided under a program, or the class of persons to be afforded an opportunity to participate in a program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include a service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(5) Examples demonstrating the application of the provisions of this section to certain programs receiving Federal financial assistance from OPM are contained in Appendix C of this subpart.

(6) (i) In administering a program regarding which the recipient had previously discriminated against persons on the ground of race, color, or national origin, the recipient shall take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of prior discrimination a recipient in administering a program shall take affirmative action as required by OPM to overcome the effect of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(iii) Any affirmative action under this paragraph shall be consistent with the principles stated in the Intergovernmental Personnel Act of 1970, 84 Stat. 1909.

(c) *Employment practices.* (1) When a primary objective of a program of Federal financial assistance to which this subpart applies is to provide employment, a recipient or other party subject to this subpart shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under the program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). A recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to race, color, or national origin. The requirements applicable to construction employment under a program are those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by OPM which have as a primary objective the providing of employment include those set forth in Appendix B to this subpart.

(3) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, or national origin in the employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under, the program receiving Federal financial assistance. The provisions of paragraph (c)(1) of this section apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program to which this subpart applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishments of the objectives of Title VI or this subpart.

§ 900.405 Assurances required.

(a) *General.* (1) An application for Federal financial assistance to carry out a program to which this subpart applies, except a program to which paragraph (d) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of Federal financial assistance pursuant to the application, contain or be accompanied by, assurances that the program will be conducted or the facility operated in compliance with the requirements imposed by or pursuant to this subpart. Every program of Federal financial assistance shall require the submission of these assurances. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurances shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In other cases, the assurances obligate the recipient for the period during which the Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurances shall extend to the entire facility and to the facilities operated in connection therewith. OPM shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. The assurances shall include provisions which give the United States the right to seek judicial enforcement.

(2) When Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. When no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include a covenant in any subsequent transfer of the property. When the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by OPM to revert title to the property in the event of a breach of the covenant where, in the discretion of OPM, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on property for the purposes for which the property was transferred, OPM may agree, on request of the transferee and if necessary to accomplish the financing, and on conditions as he deems appropriate, to subordinate a right of reversion to the lien of a mortgage or other encumbrance.

(b) *Assurances from government agencies.* In the case of an application from a department, agency, or office of a State or local government for Federal financial assistance for a specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of the other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible OPM official if the applicant establishes, to the satisfaction of the responsible OPM official, that the practices in other agencies or parts or programs of the governmental unit will in no way affect (1) its practices in the program for which Federal financial assistance is sought, or (2) the beneficiaries of or participants in or persons affected by the program, or (3) full compliance with this subpart as respects the program.

(c) *Assurance from academic and other institutions.* (1) In the case of an application for Federal financial assistance by an academic institution, the assurance required by this section extends to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required by an academic institution, detention or correctional facility, or any other institution or facility, relating to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to these individuals, is applicable to the entire institution or facility unless the applicant establishes, to the satisfaction of the responsible OPM official, that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is sought, or the beneficiaries of or participants in the program. If the assistance sought is

for the construction of a facility or part of a facility, the assurance shall extend to the entire facility and to facilities operated in connection therewith.

(d) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this subpart applies (including the programs listed in Appendix A to this subpart) shall as a condition to its approval and the extension of Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with the requirements imposed by or pursuant to this subpart, and (2) provide or be accompanied by provision for methods of administration for the program as are found by OPM to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under the program will comply with the requirements imposed by or pursuant to this subpart.

§ 900.406 Compliance information.

(a) *Cooperation and assistance.* OPM, to the fullest extent practicable, shall seek the cooperation of recipients in obtaining compliance with this subpart and shall provide assistance and guidance to recipients to help them comply voluntarily with this subpart.

(b) *Compliance reports.* Each recipient shall keep records and submit to OPM timely, complete, and accurate compliance reports at the times, and in the form and containing the information OPM may determine necessary to enable it to ascertain whether the recipient has complied or is complying with this subpart. In the case of a program under which a primary recipient extends Federal financial assistance to other recipients, the other recipients shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this subpart.

(c) *Access to sources of information.* Each recipient shall permit access by OPM during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this subpart. When information required of a recipient is in the exclusive possession of another agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons the information regarding the provisions of this subpart and its applicability to the program under which the recipient received Federal financial assistance, and make this information available to them in the manner, as OPM finds necessary, to apprise the persons of the protections against discrimination assured them by Title VI and this subpart.

§ 900.407 Conduct of investigations.

(a) *Periodic compliance reviews.* OPM may from time to time review the practices of recipients to determine whether they are complying with this subpart.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this subpart may by himself or by a representative file with the Director, Office of Personnel Management a written complaint. A complaint shall be filed not later than 90 days after the date of the alleged discrimination, unless the time for filing is extended by OPM.

(c) *Investigations.* OPM will make a prompt investigation whenever a compliance review, report, complaint, or other information indicates a possible failure to comply with this subpart. The investigation will include, when appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this subpart.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this subpart, OPM will so inform the recipient and the matter will be resolved by voluntary means whenever possible. If it has been determined that the matter cannot be resolved by voluntary means, action will be taken as provided for in § 900.408.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, OPM will so inform, in writing, the recipient and the complainant, if any.

(e) *Intimidatory or retaliatory acts prohibited.* A recipient or other person shall not intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with a right or privilege secured by section 601 of Title VI or this subpart, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants shall be kept confidential; except to the extent necessary to carry out the purposes of this subpart, including the conduct of an investigation, hearing, or judicial proceeding arising thereunder.

§ 900.408 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this subpart, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this subpart may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by other means authorized by law.

(2) Other means may include, but are not limited to, (i) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under a law of the United States (including other titles of the Civil Rights Act of 1964), or an assurance or other contractual undertaking, and (ii) an applicable proceeding under State or local law.

(b) *Noncompliance with § 900.405.* If an applicant fails or refuses to furnish an assurance required under § 900.405 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. OPM shall not be required to provide assistance in that case during the pendency of the administrative proceedings under this paragraph. Subject, however, to § 900.412, OPM shall continue assistance during the pendency of the proceedings where the assistance is due and payable pursuant to an application approved prior to the effective date of this subpart.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* An order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall not become effective until—

(1) OPM has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by informal voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this subpart;

(3) The action has been approved by the Office of Personnel Management pursuant to § 900.410(e); and

(4) The expiration of 30 days after the Director, Office of Personnel Management has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for the action.

An action to suspend or terminate or refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which the noncompliance has been so found.

(d) *Other means authorized by law.* An action to effect compliance with Title VI by other means authorized by law shall not be taken by OPM until—

(1) OPM has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of a notice to the recipient or person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take corrective action as may be appropriate.

§ 900.409 Hearings.

(a) *Opportunity for hearing.* When an opportunity for a hearing is required by § 900.408(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of notice within which the applicant or recipient may request of OPM that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is deemed to be a waiver of the right to a hearing under section 602 of Title VI and § 900.408(c) and consent to the making of a decision on the basis of the information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of OPM in Washington, D.C., at a time fixed by OPM unless it determines that the convenience of the applicant or recipient or of OPM requires that another place be selected. Hearings shall be held before the Director of Office of Personnel Management, or at his/her discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and OPM have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and an administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with the rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both OPM and the applicant or recipient are entitled to introduce relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where determined reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. Documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is

stipulated for the record. Decisions shall be based on the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this subpart with respect to two or more programs to which this subpart applies, or noncompliance with this subpart and the regulations of one or more other Federal departments or agencies issued under Title VI, OPM may, by agreement with the other departments or agencies, when applicable, provide for the conduct of consolidated or joint hearings, and for the application to these hearings of rules or procedures not inconsistent with this subpart. Final decisions in these cases, insofar as this regulation is concerned, shall be made in accordance with § 900.410.

§ 900.410 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Director of Office of Personnel Management, for a final decision, and a copy of the initial decision or certification shall be mailed to the applicant or recipient. When the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of a notice of initial decision, file with the Director of Office of Personnel Management his exceptions to the initial decision, with his reasons therefore. In the absence of exceptions, the Director, Office of Personnel Management may, on his/her own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he/she will review the decision. On the filing of the exceptions or of notice of review, the Director, Office of Personnel Management shall review the initial decision and issue his/her own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision, subject to paragraph (e) of this section, shall constitute the final decision of OPM.

(b) *Decisions on record or review by the Office of Personnel Management.* When a record is certified to the Office of Personnel Management for decision or the Office of Personnel Management reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or when the Office of Personnel Management conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of the recipient's contentions, and a written copy of the final decision of the Office of Personnel Management will be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* When a hearing is waived pursuant to § 900.409, a decision shall be made by the Office of Personnel Management on the record and a written copy of the decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Office of Personnel Management shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this subpart with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by OPM.* A final decision by an official of OPM other than by the Director, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this subpart or Title VI, shall promptly be transmitted to the Director, Office of Personnel Management, who may approve the decision, vacate it, or remit or mitigate a sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain the terms, conditions, and other provisions as are consistent with and will effectuate the purposes of Title VI and this subpart, including provisions designed to assure that Federal financial assistance will not thereafter be extended under the programs to the applicant or recipient determined by the decision to be in default in its performance of an assurance given by it under this subpart, or to have otherwise failed to comply with this subpart, unless and until it corrects its noncompliance and satisfies OPM that it will fully comply with this subpart.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of the order for eligibility, or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart.

(2) An applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Director, Office of Personnel Management to restore fully its eligibility to receive Federal financial assistance. A request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Director, Office of Personnel Management determines that those requirements have been satisfied, he/she shall restore the eligibility.

(3) If OPM denies a request, the applicant or recipient may submit a request for hearing in writing, specifying why it believes OPM is in error. The applicant or recipient shall be given an expeditious hearing, with a decision on the record in accordance with the rules or procedures issued by OPM. The applicant or recipient shall be restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section remain in effect.

§ 900.411 Judicial review.

Action taken pursuant to section 602 of Title VI is subject to judicial review as provided in section 603 of Title VI.

§ 900.412 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* Regulations, orders, or like directions issued before the effective date of this subpart by OPM which impose requirements designed to prohibit discrimination against individuals on the ground of race, color, or national origin under a program to which this subpart applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to an applicant for or recipient of assistance under a program for failure to comply with the requirements, are superseded to the extent that discrimination is prohibited by this subpart, except that nothing in this subpart relieves a person of an obligation assumed or imposed under a superseded regulation, order, instruction, or like direction, before the effective date of this subpart. This subpart does not supersede any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR, 1965 Supp.) and regulations issued thereunder or (2) any other orders, regulations, or instructions, insofar as these orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in a program or situation to which this subpart is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* OPM shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this subpart as applied to programs to which this subpart applies, and for which it is responsible.

(c) *Supervision and coordination.* The Director, Office of Personnel Management may from time to time assign to officials of OPM, or to officials of other departments or agencies of the Government with the consent of the departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI and this subpart (other than responsibilities for final decision as provided in § 900.410), including the achievement of effective coordination and maximum uniformity within OPM and within the executive branch in the application of Title VI and this subpart to similar programs and in similar situations. An action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though the action had been taken by OPM.

APPENDIX A TO SUBPART D—ACTIVITIES TO WHICH THIS SUBPART APPLIES

1. Personnel mobility assignments of OPM personnel pursuant to title 5, U.S.C. chapter 33 and 5 CFR Part 334 (36 FR 6488).

[38 FR 17920, July 5, 1973, as amended at 48 FR 6311, Feb. 11, 1983]

APPENDIX B TO SUBPART D—ACTIVITIES TO WHICH THIS SUBPART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. None at this time.

APPENDIX C TO SUBPART D—APPLICATION OF SUBPART D, PART 900, TO PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE OF THE OFFICE OF PERSONNEL MANAGEMENT

Nondiscrimination in Federally assisted programs or projects:

Examples. The following examples without being exhaustive illustrate the application of the nondiscrimination provisions of the Civil Rights Act of 1964 of this subpart in programs receiving financial assistance under programs of the Office of Personnel Management.

(1) Recipients of IPA financial assistance for training programs or fellowships may not differentiate between employees who are eligible for training or fellowships on the ground of race, color, or national origin.

(2) Recipients of IPA financial assistance for training programs may not provide facilities for training with the purpose or effect of separating employees on the ground of race, color, or national origin.

Subpart E—[Reserved]

Subpart F—Standards for a Merit System of Personnel Administration

AUTHORITY: 42 U.S.C. 4728, 4763; E.O. 11589, 3 CFR Part 557 (1971-1975 Compilation).

SOURCE: 48 FR 9210, Mar. 4, 1983, unless otherwise noted.

§ 900.601 Purpose.

(a) The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to Federally required merit personnel systems in State and local agencies, in a manner that recognizes fully the rights, powers, and responsibilities of State and local governments and encourages innovation and allows for diversity among State and local governments in the design, execution, and management of their systems of personnel administration, as provided by that Act.

(b) Certain Federal grant programs require, as a condition of eligibility, that State and local agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific Federal grant statutes and in other cases are required by regulations of the Federal grantor agencies. Title II of the Act gives the U.S. Office of Personnel Management authority to prescribe standards for these Federally required merit personnel systems.

§ 900.602 Applicability.

(a) Sections 900.603-604 apply to those State and local governments that are required to operate merit personnel systems as a condition of eligibility for Federal assistance or participation in an intergovernmental program. Merit personnel systems are required for State and local personnel engaged in the administration of assistance and other intergovernmental programs, irrespective of the source of funds for their salaries, where Federal laws or regulations require the establishment and maintenance of such systems. A reasonable number of positions, however, may be exempted from merit personnel system coverage.

(b) Section 900.605 applies to Federal agencies that operate Federal assistance or intergovernmental programs.

§ 900.603 Standards for a merit system of personnel administration.

The quality of public service can be improved by the development of systems of personnel administration consistent with such merit principles as—

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

§ 900.604 Compliance.

(a) *Certification by Chief Executives.* (1) Certification of agreement by a chief executive of a State or local jurisdiction to maintain a system of personnel administration in conformance with these Standards satisfies any applicable Federal merit personnel requirements of the Federal assistance or other programs to which personnel standards on a merit basis are applicable.

(2) Chief executives will maintain these certifications and make them available to the Office of Personnel Management.

(3) In the absence of certification by the chief executive, compliance with the Standards may be certified by the heads of those State and local agencies that are required to have merit personnel systems as a condition of Federal assistance or other intergovernmental programs.

(b) *Resolution of Compliance Issues.* (1) Chief executives of State and local jurisdictions operating covered programs are responsible for supervising compliance by personnel systems in their jurisdictions with the Standards. They shall resolve all questions regarding compliance by personnel systems in their jurisdictions with the Standards. Findings and supporting documentation with regard to specific compliance issues shall be maintained by the chief executive, or a personal designee, and shall be forwarded, on request, to the Office of Personnel Management.

(2) The merit principles apply to systems of personnel administration. The Intergovernmental Personnel Act does not authorize OPM to exercise any authority, direction or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee.

(3) If a chief executive is unable to resolve a compliance issue to the satisfaction of the Office of Personnel Management, the Office will assist the chief executive in resolving the issue. The Office of Personnel Management, as authorized by section 208 of the Intergovernmental Personnel Act, will determine whether personnel systems are in compliance with the Standards and will advise Federal agencies regarding application of the Standards and recommend actions to carry out the purpose of the Act. Questions regarding interpretation of the Standards will be referred to the Office of Personnel Management.

[48 FR 9210, Mar. 4, 1983; 48 FR 10801, Mar. 15, 1983]

§ 900.605 Establishing a merit requirement.

Federal agencies may adopt regulations that require the establishment of a merit personnel system as a condition for receiving Federal assistance or otherwise participating in an intergovernmental program only with the prior approval of the Office of Personnel Management. All existing regulations will be submitted to the Office of Personnel Management for review.

§ 900.606 Publication of procedures to implement merit requirements.

Procedures to implement these merit requirements will be specified in the Federal Personnel Manual System and other relevant publications of the Office of Personnel Management.

APPENDIX A TO SUBPART F—STANDARDS FOR A MERIT SYSTEM OF PERSONNEL ADMINISTRATION

Part I: The following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Statutory Reference

Food Stamp, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020(e)(6)(B).

National Health Planning and Resources Development, Public Health Service Act (Title XV), as amended by the National Health Planning and Resources Development Act of 1974, section 1522, on January 2, 1975; 42 U.S.C. 300m-1(b)(4)(B).

Old-Age Assistance, Social Security Act (Title I), as amended by the Social Security Act Amendments of 1939, section 101, on August 10, 1939; 42 U.S.C. 302(a)(5)(A).[1]

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81-775, section 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b).

Aid to Families with Dependent Children, Social Security Act (Title IV-A), as amended by the Social Security Act Amendments of 1939, section 401, on August 10, 1939; 42 U.S.C. 602(a)(5).

Aid to the Blind, Social Security Act (Title X), as amended by the Social Security Act Amendments of 1939, section 701, on August 10, 1939; 42 U.S.C. 1202(a)(5)(A).[1]

Aid to the Permanently and Totally Disabled, Social Security Act (Title XIV), as amended by the Social Security Act Amendments of 1950, section 1402, on August 28, 1950; 42 U.S.C. 1352(a)(5)(A).[1]

Aid to the Aged, Blind or Disabled, Social Security Act (Title XVI), as amended by the Public Welfare Amendments of 1962, section 1602, on July 25, 1962; 42 U.S.C. 1382(a)(5)(A).[1]

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended by the Social Security Amendments of 1965, section 1902, on July 30, 1965; 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1978, section 307 on October 18, 1978; 42 U.S.C. 3027(a)(4).

Adoption Assistance and Foster Care, Adoption Assistance and Child Welfare Act of 1980; 42 U.S.C. 671(a)(5).

Part II: The following programs have a regulatory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Regulatory Reference

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR 1902.3(h).

Occupational Safety and Health Statistics, Williams-Steiger Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Child Welfare Services, Social Security Act (Title IV-B); 45 CFR 1392.49(c).

Development Disabilities Services and Facilities Construction, Developmental Disabilities Services and Facilities Construction Act, as amended by Pub. L. 95-602, on November 6, 1978; 45 CFR 1386.21.

Emergency Management Assistance, Civil Defense Act of 1950 (Title II), as amended; 44 CFR 302.5.

Comprehensive Employment and Training Act, Comprehensive Employment and Training Act of 1973; 29 CFR 98.14(a).

Part III: The following programs have personnel requirements which may be met by a merit system which conforms to the Standards for Merit Systems of Personnel Administration.

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[1] Pub. L. 92-603 repealed Titles I, X, XIV, and XVI of the Social Security Act, effective January 1, 1974, except that "such repeal does not apply to Puerto Rico, Guam, and the Virgin Islands."

Program, Legislation, and Reference

Disability Determination Services, Social Security Act (Titles II and XVI), as amended; SSA Disability Insurance State Manual, Part IV, § 425.1.

Health Insurance for the Aged (Medicare), Social Security Act (Title XVIII), especially as amended by the Health Insurance for the Aged Act, on July 30, 1965; SSA State Operations Manual, Part IV section 4510(a).

Subpart G—Nondiscrimination on the Basis of Handicap in Federally Assisted Programs of the Office of Personnel Management

AUTHORITY: Secs. 503, 507, Pub. L. 91-648, 84 Stat. 1909 and 29 U.S.C. 794.

SOURCE: 45 FR 75569, Nov. 14, 1980, unless otherwise noted.

§ 900.701 Purpose.

The purpose of this part is to effectuate Section 504 of the Rehabilitation Act of 1973, to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance from the Office of Personnel Management (OPM).

§ 900.702 Applicability.

This subpart applies to each activity, program or project receiving Federal financial assistance from the Office of Personnel Management from the date this subpart is approved. The duration of the applicability is the period of time for which the assistance is authorized.

§ 900.703 Definitions.

Unless the content requires otherwise, in this subpart:

(a) "Recipient" means any State or its political subdivisions, any instrumentality of a State or its political subdivisions, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(b) "Federal financial assistance" means any grant, loan, contract, (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(c) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(d) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(1) As used in paragraph (d) of this section, the phrase: "physical or mental impairment" means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self,

performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such impairment" means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means:

(i) Has a physical or mental impairmant that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (d) of this section but is treated by a recipient as having such an impairment.

(e) Qualified handicapped person means:

(1) With respect to employment, a handicapped person who with reasonable accommodation, can perform the essential functions of the job in question.

(2) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(f) Ultimate beneficiary means one among a class of persons who are entitled to benefit from or otherwise participate in, programs receiving Federal financial assistance and to whom the protections of this subpart apply.

§ 900.704 Discrimination prohibited.

(a) No qualified handicapped person shall, on the basis of handcap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance from the Office of Personnel Management.

(b) (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(4) A recipient may not, in determining the site or location of a facility, make selections:

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance, or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees and beneficiaries are available to persons with impaired vision and hearing.

§ 900.705 Program accessibility.

(a) No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in or otherwise be subjected to discrimination under any program or activity to which this subpart applies.

(b) A recipient shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

(c) A recipient may comply with the requirements of paragraph (b) of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, alteration of facilities or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

(d) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(e) In the event that structural changes to facilities are necessary to meet the requirements of this section, a recipient shall develop within 12 months of the effective date of this subpart a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons.

(f) OPM will adopt the Architectural and Transportation Barriers Compliance Board's "Minimum Guidelines and Requirements for Accessible Design" when they are issued in final form. (See 45 FR 55010 for the proposed version.) It is suggested that, in the interim, design construction or alteration of facilities be in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" published by the American National Standards Institute, Inc. (ANSI A117.1—1961 (R1971)). Copies obtainable from American National Standards, Inc., 1430 Broady, New York, N.Y. 10018.

§ 900.706 Employment practices.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under a program or activity that receives or benefits from Federal financial assistance from OPM.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this subpart applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) The prohibition against discrimination in employment applies to the following activities:

(i) Recruitment, advertising, and the processing of applications for employment;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(vii) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Employer sponsored activities, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Reasonable accommodation.* (1) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee under any program or activity receiving Federal financial assistance from OPM unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(2) Reasonable accommodation may include, but shall not be limited to, making facilities readily accessible to and usable by handicapped persons, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, job restructuring and providing part-time or modified work schedules and other similar actions.

(3) In determining pursuant to paragraph (b)(1) of this section whether an accommodation would impose an undue hardship on the operation of the recipient in question, factors to be considered by OPM include:

(i) The overall size of the recipient's program with respect to the number of employees, number and type of facilities and size of budget;

(ii) The type of operation, including the composition and structure of the work force; and

(iii) The nature and the cost of the accommodation.

(c) *Employment criteria.* (1) A recipient involved in activities receiving Federal financial assistance may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons in any program or activity that receives Federal financial assistance unless the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question and alternative job-related tests or criteria that do not screen out as many handicapped persons are not shown by the Office of Personnel Management's Personnel Research and Development Center to be available.

(2) A recipient shall select and administer tests concerning employment so as to ensure that, when administered under any program or activity that receives Federal financial assistance from OPM, to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's ability to perform the duties of the type of position in question rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(d) *Preemployment inquiries.* (1) Except as provided in paragraph (d)(2) of this section, a recipient, when considering an applicant for employment under any program or activity receiving Federal financial assistance from OPM, may not conduct a preemployment medical examination and may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(2) Nothing in this section shall prohibit an organization from conditioning an offer of employment under any program or activity receiving Federal financial assistance from OPM on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided,* That (i) All entering employees are subjected to such an examination regardless of handicap or when a preemployment medical questionnaire used for positions which do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition; and

(ii) The results of such an examination are used in accordance with the requirements of this subpart.

§ 900.707 Certification required.

(a) *General.* Each application to OPM for financial assistance, as a condition to its approval and the extension of financial assistance, shall contain or be accompanied by, a certification from the applicant in a form prescribed by OPM that the program will be conducted in compliance with the requirements of this subpart. The assurance shall obligate the recipient for the period during which the financial assistance is extended to the program.

(b) *Certification from subgrantees.* A certification shall be required of all subgrantees receiving financial assistance from OPM to the effect that all programs or parts thereof carried out by subgrantees shall be in compliance with the requirements of this subpart. The recipient shall be responsible for securing the certification from subgrantees.

§ 900.708 Self-evaluation.

(a) Each recipient shall, within one year of the receipt of financial assistance, conduct or have conducted an evaluation of its compliance with this subpart with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. Each such recipient shall evaluate its current policies and practices and their effects, and modify any that do not meet the requirements of this part. Each such recipient shall permit the Office of Personnel Management, during normal business hours, to examine its self-evaluation along with its books, records, accounts, facilities and other sources of information as may be useful to determine whether there has been compliance with this subpart. Self-evaluation required under other Federal programs may be accepted by OPM if the information pertaining to activities receiving financial assistance from OPM is included and the records are available to OPM representatives.

(b) Each recipient shall modify, after consultation with interested persons and organizations, including handicapped persons, any policies and practices that do not meet the requirements of this subpart; and

(c) Each recipient shall take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

§ 900.709 Notice and consultation.

(a) Programs and activities receiving OPM financial support shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of handicap in violation of Section 504 and this subpart.

(b) As appropriate, a recipient shall consult with interested persons, including handicapped persons or organizations representing handicapped persons, in achieving compliance with this subpart.

§ 900.710 Procedure for effecting compliance.

When the Office of Personnel Management determines that a recipient has failed or threatens to fail to comply with this subpart and the noncompliance or threatened noncompliance cannot be corrected by informal means, OPM may suspend or terminate or refuse to grant or continue financial assistance as provided in § 900.408 of Title 5 of the Code of Federal Regulations.

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart A—Motor Vehicle Operators

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Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

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NOMENCLATURE CHANGES: 37 FR 16787, Aug. 19, 1972.

Subpart A—Motor Vehicle Operators

AUTHORITY: 5 U.S.C. 3301, 3320, 7301; 40 U.S.C. 491; E.O. 10577, 3 CFR, 1954—1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964—1965 Comp., p. 306, unless otherwise noted. (Separate authority is listed under § 930.107).

SOURCE: 50 FR 34669, Aug. 27, 1985, unless otherwise noted.

§ 930.101 Purpose.

This subpart governs agencies in authorizing employees to operate Government-owned or -leased (acquired for other than short term use for which the Government does not have full control and accountability) motor vehicles for official purposes within the States of the Union, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

§ 930.102 Definitions.

In this subpart:

"Agency" means a department, independent establishment, or other unit of the executive branch of the Federal Government, including a wholly owned Government corporation, in the States of the Union, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

"Employee" means an employee of an agency in either the competitive or excepted service or an enrollee of the Job Corps established by section 102 of the Economic Opportunity Act of 1964 (42 U.S.C. 2712).

"Identification card" means the United States Government Motor Vehicle Operator's Identification Card, Optional Form 346, or an agency-issued identification card that names the types of Government-owned or -leased vehicles the holder is authorized to operate.

"Identification document" means an official identification form issued by an agency that properly identifies the individual as a Federal employee of the agency.

"Incidental operator" means an employee, other than one occupying a position officially classified as a motor vehicle operator, who is required to operate a Government-owned or -leased motor vehicle to properly carry out his or her assigned duties.

"Motor vehicle" means a vehicle designed and operated principally for highway transportation of property or passengers, but does not include a vehicle (a) designed or used for military field training, combat, or tactical purposes; (b) used principally within the confines of a regularly established military post, camp, or depot; or (c) regularly used by an agency in the performance of investigative, law enforcement, or intelligence duties if the head of the agency determines that exclusive control of the vehicle is essential to the effective performance of those duties.

"Operator" means an employee who is regularly required to operate Government-owned or -leased motor vehicles and is occupying a position officially classified as motor vehicle operator.

"Road test" means OPM's Test No. 544 or similar road tests developed by Federal agencies to evaluate the competency of prospective operators.

"State license" means a valid driver's license that would be required for the operation of similar vehicles for other than official Government business by the States, District of Columbia, Puerto Rico, or territory or possession of the United States in which the employee is domiciled or principally employed.

§ 930.103 Coverage.

This subpart governs agencies in authorizing their employees to operate Government-owned or -leased motor vehicles for official purposes within the States of the Union, the District of Columbia, Puerto Rico, and the territories or possessions of the United States and establishes minimum procedures to ensure the safe and efficient operation of such vehicles.

§ 930.104 Objectives.

This subpart requires that agencies (a) establish an efficient and effective system to identify those Federal employees who are qualified and authorized to operate Government-owned or -leased motor vehicles while on official Government business; and (b) periodically review the competence and physical qualifications of these Federal employees to operate such vehicles safely.

§ 930.105 Minimum requirements for competitive and excepted service positions.

(a) An agency may fill motor vehicle operator positions in the competitive or excepted services by any of the methods normally authorized for filling positions. Applicants for motor vehicle operator positions and incidental operators must meet the following requirements for these positions:

(1) Possess a safe driving record as defined in OPM qualification guides;

(2) Possess a valid State license;

(3) Except as provided in § 930.107, pass a road test; and

(4) Demonstrate that they are physically qualified to operate the appropriate motor vehicle safely in accordance with the standards and procedures published in chapters 339 and 930 of the Federal Personnel Manual.

(b) Agencies may establish additional requirements to assure that the objectives of this subpart are met.

§ 930.106 Details in the competitive service.

An agency may detail an employee to an operator position in the competitive service for 30 days or less when the employee possesses a State license. For details exceeding 30 days, the employee must meet all the requirements of § 930.105 and OPM's requirements applicable to position change and transfer found in the Federal Personnel Manual chapter 300.

§ 930.107 Waiver of road test.

Under the following conditions, OPM or an agency head or his or her designated representative may waive the road test:

(a) OPM waives the road test requirement for operators of vehicles of one ton load capacity or less who possess a current driver's license from one of the 50 States, District of Columbia, or Puerto Rico, where the employee is domiciled or principally employed, except for operators of buses and vehicles used for: (1) Transportation of dangerous materials; (2) law enforcement; or (3) emergency services.

(b) OPM waives the road test for operators, and agencies may waive the road test for incidental operators of any class of vehicle, who possess a current driver's license for the specific type of vehicle to be operated from one of the 50 States, District of Columbia, or Puerto Rico, where the employee is domiciled or principally employed.

(c) An agency head may waive the road test for operators and incidental operators not covered by paragraphs (a) and (b) of this section, but only when in his or her opinion it is impractical to apply it, and then only for an employee whose competence as a driver has been established by his or her past driving record.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

§ 930.108 Periodic physical evaluation.

At least once every 4 years, each agency will evaluate in accordance with standards and procedures established by OPM in the Federal Personnel Manual, the physical qualifications of each employee who operates a Government-owned or -leased vehicle.

§ 930.109 Periodic review and renewal of authorization.

(a) At least once every 4 years, each agency will review each employee's authorization to operate Government-owned or -leased motor vehicles.

(b) An agency may renew the employee's authorization only after the agency head or his or her designated representative has determined that the employee continues to meet prescribed physical standards and continues to demonstrate competence to operate the type of motor vehicle to which assigned based on a continued safe driving record.

§ 930.110 Identification of authorized operators and incidental operators.

Agencies must have procedures to identify employees who are authorized to operate Government-owned or -leased motor vehicles. Such procedures must provide for adequate control of access to vehicles and assure that the other requirements of this subpart and the Federal Personnel Manual are met.

§ 930.111 State license in possession.

An operator or incidental operator will have a State license in his or her possession at all times while driving a Government-owned or -leased motor vehicle on a public highway.

§ 930.112 Identification card or document in possession.

The operator or incidental operator will have a valid agency identification card or document (e.g., building pass or credential) in his or her possession at all times while driving a Government-owned or -leased motor vehicle.

§ 930.113 Corrective action.

An agency will take adverse, disciplinary, or other appropriate action against an operator or an incidental operator in accordance with applicable laws and regulations. Agency orders and directives will include the following reasons among those constituting sufficient cause for such action against an operator or an incidental operator:

(a) The employee is convicted of operating under the intoxicating influence of alcohol, narcotics, or pathogenic drugs.

(b) The employee is convicted of leaving the scene of an accident without making his or her identity known.

(c) The employee is not qualified to operate a Government-owned or -leased vehicle safely because of a physical or medical condition. In making such a determination, agencies should consult a Federal medical officer or other medical authority as appropriate.

(d) The employee's State license is revoked.

(e) The employee's State license is suspended. However, the agency may continue the employee in his or her position for operation of Government-owned or -leased motor vehicles on other than public highways for not to exceed 45 days from the date of suspension of the State license.

§ 930.114 Reports required.

An agency will submit to OPM, on request (a) a copy of agency orders and directives issued in compliance with this subpart; and (b) such other reports as OPM may require for adequate administration and evaluation of the motor vehicle operator program.

§ 930.115 Requests for waiver of requirements.

Agencies may request authority from OPM to waive requirements in this subpart or the Federal Personnel Manual. OPM may grant exceptions or waivers when it finds these waivers or exceptions are in the interest of good administration and meet the objectives of this program.

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

AUTHORITY: 5 U.S.C. 1305, 3105, 3344, 5335, 5372, 7521, unless otherwise noted.

SOURCE: 33 FR 12519, Sept. 4, 1968, unless otherwise noted.

GENERAL PROVISIONS

§ 930.201 Coverage.

(a) This subpart applies to persons appointed under section 3105 of title 5, United States Code, for proceedings required to be conducted in accordance with sections 556 and 557 of that title, and to administrative law judge positions.

(b) Except as otherwise provided in this subpart, the rules and regulations applicable to positions in the competitive service apply to administrative law judge positions.

§ 930.202 Definitions.

In this subpart:

(a) "Agency" has the meaning given it by section 551 of title 5, United States Code.

(b) "Detail" means the temporary assignment of an employee from one position to another position without change in his civil service or pay status. The assignment to an administrative law judge of a case of the level of difficulty that would ordinarily be assigned to an administrative law judge of a different grade does not of itself constitute a detail within the meaning of this subpart.

(c) "Administrative law judge positions" means a position in which any portion of the duties includes those which require the appointment of an administrative law judge under section 3105 of title 5, United States Code.

(d) "Promotion" means a change in grade from one position to a higher graded position, whether newly created, or left vacant because of promotion, demotion, transfer, reassignment, retirement, separation of the last incumbent, or a change resulting from the assignment of work of higher grade than the work of the position to which the administrative law judge was absolutely appointed.

(e) "Reinstatement" means reemployment authorized on the basis of the appointee's absolute status as administrative law judge after separation from an administrative law judge position.

(f) "Removal" means an involuntary change in the status of an administrative law judge, including discharge, suspension, reduction in grade, reduction in pay, and a furlough of 30 days or less from the position of administrative law judge and demotion, reassignment, and promotion to a position other than that of administrative law judge.

(5 U.S.C. 7701, et seq.)

[33 FR 12519, Sept. 4, 1968, as amended at 44 FR 48955, Aug. 21, 1979]

§ 930.203 Appointment.

(a) Eligible rating. An applicant for an administrative law judge position who meets the minimum requirements for entrance to the examination and attains a numerical rating determined by OPM as sufficient to produce an adequate register is eligible for appointment. An applicant who obtains an ineligible rating or an applicant who is dissatisfied with his or her final rating may appeal the rating to the Administrative Law Judge Rating Appeals Panel, Office of Personnel Management, Washington, D.C. 20415, within 30 days from the date of final action by the Office of Administrative Law Judges, or such later time as may be allowed by the Panel.

(b) *Prior approval.* An agency may make an appointment to an administrative law judge position only with the prior approval of OPM, except when it makes its selection from a certificate of eligibles furnished by OPM. An appointment is subject to investigation in accordance with §§ 731.201 through 731.303 of this chapter and subject to security clearance by the agency.

(c) *Probationary and career-conditional periods.* The requirement of a probationary and career-conditional period before absolute appointment does not apply to an appointment to an administrative law judge position.

(d) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may appoint as an administrative law judge an employee who is serving in a position which is classified as an administrative law judge position on the basis of legislation, Executive order, or decision of a court if:

(1) He has a competitive status or was serving in an excepted position under a permanent appointment;

(2) He was serving in the position on the date of the legislation, Executive order, or decision of the court on which the classification of the position is based;

(3) OPM receives a recommendation for his appointment from the agency concerned not later than 6 months after classification of the position on the basis of the legislation, Executive order, or decision of the court; and

(4) OPM approves his qualifications for the position. In an emergency situation, when the needs of the service require it, OPM may authorize the conditional appointment of an employee to an administrative law judge position pending final decision on his eligibility for absolute appointment under this paragraph.

(e) *Appointment of legislative and judicial employees.* An agency may appoint a former employee of the legislative or judicial branch to an administrative law judge position if he passes such suitable noncompetitive examination as OPM prescribes and is otherwise eligible under the provisions of section 3304(c) of title 5, United States Code.

(f) *Appointment of incumbents of nonadministrative law judge positions.* Except as provided in paragraphs (c) and (d) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position, except by selection from a certificate of eligibles furnished by OPM from the open competitive register.

[33 FR 12519, Sept. 4, 1968; 34 FR 1551, Jan. 31, 1969, as amended at 47 FR 46067, Oct. 15, 1982]

§ 930.203a Title of Administrative Law Judge.

The title, "administrative law judge" is the official class title for an administrative law judge position. Each agency shall use only this official class title for personnel, budget, fiscal and all other purposes, and may not use the word "judge" as the title or part of the title for any other position for any purpose.

[39 FR 20186, June 7, 1974]

§ 930.204 Promotion.

(a) When the Office of Personnel Management classifies an occupied administrative law judge position at a higher grade, the Office of Personnel Management shall direct the promotion of the incumbent administrative law judge and the promotion is effective on the date named by the Office of Personnel Management. This regulation pertains only to appointments to positions which because of their substantive and technical nature warrant a grade GS-16; the regulation does not pertain to positions which because of their managerial and administrative nature warrant a grade GS-16.

(b) No more than twice during a calendar year, an agency may notify the Office of Personnel Management that it wishes to fill a specific number of its grade GS-16 ALJ vacancies from among its grade GS-15 ALJs who are on the GS-16 ALJ register and who have served as judges at the agency for at least one year. The Office of Personnel Management shall select from the grade GS-15 ALJs of that agency those ALJs who it determines are best qualified for appointment to a grade GS-16 ALJ position and shall direct their appointment by the agency to such grade GS-16 ALJ positions.

[46 FR 31406, June 16, 1981]

§ 930.205 Reassignment.

An agency may reassign an administrative law judge who is serving under absolute appointment from one administrative law judge position to another administrative law judge position with the prior approval of OPM on a noncompetitive basis in accordance with regular civil service procedures.

§ 930.206 Transfer.

(a) With the prior approval of OPM, an agency may transfer an administrative law judge with a promotion only after he has established his eligibility at the higher grade in accordance with all current examination requirements.

(b) An agency may transfer an administrative law judge from one administrative law judge position to another administrative law judge position, when this does not involve a promotion, with the prior approval of OPM on a noncompetitive basis in accordance with regular civil service procedures.

(c) An agency may not transfer a person from one administrative law judge position to another administrative law judge position under paragraph (a) or (b) of this section sooner than one year after the person's last nontemporary competitive appointment.

[33 FR 12519, Sept. 4, 1968, as amended at 41 FR 2074, Jan. 14, 1976]

§ 930.207 Reinstatement.

(a) Except as provided in paragraph (b) of this section, an agency may reinstate a person who has served with absolute status as an administrative law judge under section 3105 of title 5, United States Code, only after:

(1) He/she has established his/her eligibility at the grade to which he/she is to be reinstated in accordance with requirements of Office of Personnel Management Announcement No. 318, or any revision or successor thereto, and

(2) He/she demonstrates that his/her experience satisfies all current qualifications requirements. Reinstatement is subject to investigation by, and the prior approval of, the Office of Personnel Management.

(b) Any person who is or has been appointed directly from an administrative law judge position to the position of Director, Office of Administrative Law Judges, may at any time be reinstated to an administrative law judge position without regard to requirements set out in paragraph (a) of this section.

[45 FR 81030, Dec. 9, 1980]

§ 930.208 Restoration.

Parts 352 and 353 of this chapter governing reemployment rights and restoration after military service apply to reemployment and restoration to administrative law judge positions.

§ 930.209 Detail and assignment to other duties.

(a) An agency may not detail an employee who is not an administrative law judge to an administrative law judge position.

(b) An agency may assign an administrative law judge (by detail or otherwise) to perform duties that are not duties of an administrative law judge without the prior approval of OPM only when:

(1) The other duties are not inconsistent with the duties and responsibilities of an administrative law judge;

(2) The assignment is to last no longer than 120 days; and

(3) The administrative law judge has not had an aggregate of more than 120 days of those assignments within the preceding 12 months.

(c) On a showing by an agency that it is in the public interest to do so, OPM may authorize a waiver of paragraphs (b)(2) and (3) of this section.

§ 930.210 Pay.

(a) OPM shall classify administrative law judge positions in accordance with the regulations and procedures adopted by OPM for classifications under chapter 51 of title 5, United States Code. OPM shall make these classifications independently of agency recommendations and ratings.

(b) An administrative law judge is entitled to within-grade increases in accordance with Part 531 of this chapter, except that the requirement that his work be of an acceptable level of competence as determined by the head of his agency does not apply.

(c) An agency shall not grant a quality increase under section 5336(a) of title 5, U.S.C., or a monetary or honorary award under section 4503 of title 5, U.S.C., for superior accomplishment by an Administrative Law Judge in the performance of adjudicatory functions.

(d) Upon appointment, an administrative law judge shall be paid at the minimum rate of the grade approved by OPM unless he is eligible for a higher rate because of prior service.

[33 FR 12519, Sept. 4, 1968, as amended at 43 FR 43013, Sept. 22, 1978]

§ 930.211 Performance rating.

An agency shall not rate the performance of an administrative law judge.

§ 930.212 Rotation of judges.

Insofar as practicable, an agency shall assign its administrative law judges in rotation to cases.

§ 930.213 Use of judges of other agencies.

At the request of an agency that is occasionally or temporarily insufficiently staffed, OPM shall provide for the temporary use by the agency of the services of an administrative law judge of another agency. OPM, with the consent of the agency in which an administrative law judge is employed, shall select the administrative law judge to be used, and shall name the date on which the judge is to be made available to the agency in need of his services.

§ 930.214 Separation.

(a) *Removal.* An agency may remove an administrative law judge only for good cause, established and determined by the Merit Systems Protection Board on the record and after opportunity for hearing before the Board as provided in §§ 1201.131 through 1201.136 of this title.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances by reason of which the retention of an administrative law judge in his/her position, pending adjudication of the existence of good cause for his/her removal, would be detrimental to the interests of the Government, the agency shall either assign the administrative law judge to duties in which these conditions would not exist, or place him/her on annual leave for the period that will be covered by the annual leave to his/her credit. An agency may take action under this paragraph only with the prior approval of the Board.

(c) *Exceptions from procedures.* The procedures in this subpart governing the removal of administrative law judges do not apply in making dismissals requested by OPM under § 5.2 and § 5.4 of this chapter, nor to dismissals made by agencies in the interest of national security.

(5 U.S.C. 7701, et seq.)

[33 FR 12519, Sept. 4, 1968, as amended at 44 FR 48955, Aug. 21, 1979]

§ 930.215 Reduction in force.

(a) *Service date.* The service date for the purpose of reductions in force of administrative law judges reflects the length of Federal Government service.

(b) *Determination of tenure groups.* In determining retention standing in a reduction in force, each agency shall classify its administrative law judges in groups and subgroups according to tenure of employment and veteran preference in the manner prescribed in Part 351 of this chapter. However, as administrative law judges are not given performance ratings, the provisions in Part 351 of this chapter referring to the effect of performance ratings on retention standing are not applicable to administrative law judges.

(c) *Status of administrative law judges who are reached in reduction in force.* (1) OPM, on request of an administrative law judge who has been notified he is to be separated, furloughed, or demoted because of a reduction in force, shall place his name on:

(i) OPM's priority referral list for the grade in which he last served and for all lower grades; and

(ii) The open competitive administrative law judge register, ahead of all other eligibles, for the grade from which he was separated, furloughed, or demoted as an administrative law judge and for all lower grades. When more than one administrative law judge is affected, OPM shall rate the qualifications of the several judges and relative standing at the top of the register is based on these ratings.

(2) An administrative law judge may file a request under paragraph (c)(1) of this section at any time after the receipt of the reduction-in-force notice but not later than 90 days after the date of separation, furlough, or demotion. He shall file with his request a Standard Form 171 and a copy of the reduction-in-force notice.

(3) When there is no administrative law judge on the agency's reemployment priority list, but there is an administrative law judge who has been placed on the priority referral list (paragraph (c)(1)(i) of this section) or on the top of the open competitive register for priority certification (paragraph (c)(1)(ii) of this section), the agency may fill a vacant administrative law judge position only by selection from the priority referral list or the register, unless it obtains the prior approval of OPM under § 930.203(b), § 930.204, § 930.205, § 930.206, or § 930.207.

(4) Referral, certification, and selection of administrative law judges from the agency's reemployment priority list, OPM's priority referral list, or the open competitive register are made without regard to selective certification procedures applied in original appointment.

(d) *Retention preference regulations.* The reduction-in-force regulations for use in a reduction in force (Part 351 of this chapter), except as modified by this section, apply to reductions in force of administrative law judges.

§ 930.216 Temporary Reemployment: Senior Administrative Law Judges.

(a) Subject to the requirements and limitations of this section, an annuitant, as defined by section 8331 of Title 5, United States Code, receiving an annuity from the Civil Service Retirement and Disability Fund (1) who has served with absolute status as an administrative law judge under section 3105 of that Title; and (2) who has met current qualification and examination requirements set forth in OPM Examination Announcement No. 318 (including the requirement to maintain a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution), may be temporarily reemployed as an administrative law judge by an agency that has temporary, irregular workload requirements for conducting proceedings in accordance with sections 556 and 557 of that title. Such retired administrative law judges who are so reemployed will be known as senior administrative law judges.

(b) Retired administrative law judges who meet the requirements of paragraph (a) of this section and who are available for temporary reemployment must notify OPM in writing of their availability, giving their full name, address, telephone number, name of the agencies where the person served as an ALJ, and jurisdictions in which they are currently licensed to practice law. OPM will maintain a master list of such retired administrative law judges for use in responding to agency requests for such judges.

(c) An agency that wishes to temporarily reemploy administrative law judges must submit a written request to OPM. The request shall—

(1) Identify the statutory authority under which the administrative law judge is expected to conduct proceedings;

(2) Demonstrate that the agency is occasionally or temporarily understaffed;

(3) Specify the tour of duty, location, period of time, or particular case(s), for the requested reemployment; and

(4) Describe any special qualifications desired in the retired administrative law judge that it wishes to reemploy, such as experience in a particular field, agency, or substantive area of law.

(d) OPM will approve agency requests for temporary reemployment of retired administrative law judges for a specified period or periods provided:

(1) The requesting agency fully justifies that it requires the use of an administrative law judge and that it is occasionally or temporarily understaffed; and

(2) No other administrative law judge with the appropriate qualifications is available through OPM under § 930.213 of this subpart to perform the occasional or temporary work for which reemployment is requested.

(e) Upon approval of an agency request to reemploy a retired administrative law judge, OPM will select from its master list of retired administrative law judges, in rotation to the extent practicable, those retired judges who it determines meet agency requirements. OPM will then provide a list of such individuals to the requesting agency and the agency must then select from that list a retired administrative law judge for reemployment.

(f) Reemployment of retired administrative law judges is subject to investigation of suitability in accordance with §§ 731.201 through 731.303 of this chapter. It is also subject to conflict of interest and security investigation requirements by the appointing agency.

(g) Reemployment as senior administrative law judges will be for either (1) a specified period not to exceed 1 year; or (2) such periods as may be necessary for the reemployed administrative law judge to conduct and complete the hearing of one or more specified cases and issue decisions therein. Upon agency request, OPM may either reduce or extend such period of reemployment, as necessary, to coincide with changing staffing requirements.

(h) An agency may assign its senior administrative law judges to either (1) hear one or more specific cases; or (2) hear, in normal rotation to the extent practicable, a number of cases on its docket and issue decisions therein.

(i) Hours of duty, administrative support services, and travel reimbursement for senior administrative law judges will be determined by the employing agency in accordance with the same rules and procedures that are generally applicable to employees.

(j) A senior administrative law judge serves subject to the same limitations on performance appraisal and removal as any other administrative law judge employed under this subpart and section 3105 of title 5, United States Code. An agency will not rate the performance of a senior administrative law judge. Actions may not be taken against senior administrative law judges during the period of reemployment, except for good cause established and determined by the Merit Systems Protection Board after opportunity for a hearing on the record before the Board as provided in §§ 1201.131 through 1201.136 of this Title.

(k) A senior administrative law judge will be paid by the employing agency the current rate of pay for the grade at which the duties to be performed have been classified and at a step of that grade that is nearest (when rounded up) to the highest previous grade and step attained as an administrative law judge before retirement. However, an amount equal to the annuity allocatable to the period of actual employment will be deducted from his or her pay and deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

[50 FR 15408, Apr. 18, 1985]

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

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AUTHORITY: E.O. No. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982), 3 CFR, 1982 Comp., p. 139, and E.O. No. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983).

SOURCE: 49 FR 32741, Aug. 16, 1984, unless otherwise noted.

Subpart A—Administration and General Provisions

§ 950.101 Definitions.

(a) The terms "voluntary agency," "voluntary health and welfare agency," "voluntary charitable agency," and "voluntary charitable health and welfare agency" mean an organization that is organized and operated for the purpose of rendering, or of materially or financially supporting the rendering of, one or more of the following services directly to, and for the direct benefit of, human beings:

(1) Delivery of health care to ill or infirm individuals;

(2) Education and training of personnel for the delivery of health care to ill or infirm individuals;

(3) Health research for the benefit of ill or infirm individuals;

(4) Delivery of education, training, and care to physically and mentally handicapped individuals;

(5) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are victims of intra-family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(6) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes and emergencies;

(7) Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, the preparation and delivery of meals, educational opportunities, and job training;

(8) Legal aid services that are provided to needy, poor, and indigent individuals solely because of their inability to afford legal counsel and without a policy or practice of discrimination for or against the kind of cause, claim, or defense of the individuals;

(9) Protection of families that, on account of need, poverty, indigence, or emergency, are in long-term or short-term need of family, child-care, and maternity services, child and marriage counseling, foster care, and guidance or assistance in the management and maintenance of the home and household;

(10) Relief of needy, poor, and indigent infants and children, and of orphans, including the provision of adoption services;

(11) Relief of needy, poor, and indigent adults and of the elderly;

(12) Assistance, consistent with the mission of the Department of Defense, to members of the armed forces and their families;

(13) Assistance, consistent with the mission of the Federal agency or facility involved, to members of its staff or service who, by reason of geographic isolation, emergency conditions, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs;

(14) Lessening of the burdens of government with respect to the provision of any of the foregoing services; or

(15) Any other health and welfare service rendered by a charitable health and welfare entity organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3).

(b) Campaign terms:

(1) "Director" shall mean the Director of the United States Office of Personnel Management, or his delegate;

(2) "Employee" shall mean any person employed by the government of the United States or any branch, unit, or instrumentality thereof, including persons in the civil service and in the uniform services;

(3) "Combined Federal Campaign" or "Campaign" or "CFC" shall mean the fund-raising program established and administered by the Director pursuant to Executive Order No. 12353, as amended by Executive Order No. 12404, and any subsidiary units of such program;

(4) "Community" shall mean a community that is defined either by generally recognized geographic bounds or by its relationship to an isolated government installation;

(5) "Direct Contributions" shall mean gifts, in cash or in donated in-kind material, given by individuals and/or other non-governmental sources directly to the spending health and welfare organization.

(6) "Indirect Contributions" shall mean gifts, in cash or in donated in-kind material, given to the spending health and welfare organizations by another health and welfare organization, but not transfers, dues or other funds from affiliated organizations or government, which are not to be considered as public "contributions."

(c) The term "Principal Combined Fund Organization" or "PCFO" means the organization in a local Combined Federal Campaign that has been selected and charged pursuant to 5 CFR 950.509 to manage and administer the local Combined Federal Campaign, subject to the direction and control of the local Federal Coordinating Committee and the Director. All of its Campaign duties shall be conducted under the title "Principal Combined

Fund Organization for ———— (local CFC)" and not under the corporate title of the qualifying federation.

§ 950.103 Summary description of the program.

(a) *Assigned Campaign Periods.* In the United States, Combined Federal Campaign are held when set by the Director, usually in the fall; the DOD Overseas Combined Federal Campaign is also usually held during the fall. The solicitation period for a Combined Federal Campaign is normally limited to six weeks but may be extended for good cause by the local Federal Coordinating Committee.

(b) *Combined Federal Campaign.* At locations where there are 200 or more Federal personnel, all campaigns must be consolidated into a single, annual drive, known as the Combined Federal Campaign. The campaign is managed by the organization designated as the Principal Combined Fund Organization, in accord with 5 CFR 950.509, under the supervision of the local Federal Coordinating Committee and the Director. Such campaigns are conducted under administrative arrangements that provide for allocation of contributions in accordance with specific designations by donors. Solicitations are conducted exclusively by Federal personnel and only Federal personnel are solicited.

(c) *Decentralized Operations.* The federalism principle shall guide Campaign organization. Following designation of a Principal Combined Fund Organization, local representatives of that Organization initiate campaigns in their local community by direct contact with the heads of Federal offices and installations. Each Federal agency conducts its own solicitation among its employees, using campaign materials, supplies, and speakers furnished by or through the Principal Combined Fund Organization, under the direction of the local Federal Coordinating Committee and the Director.

(d) *Solicitation Methods.* Employee solicitations are conducted during duty hours using methods that permit true voluntary giving and reserve to the individual the option of disclosing any gift or keeping it confidential.

(e) *Off-the-Job Solicitation.* Many worthy voluntary agencies do not participate in the on-the-job program because they do not wish to join in its coordinated arrangements or because they cannot meet the requirements for eligibility. Such vountary agencies may solicit Federal employees at their homes as they do other citizens of the community, or appeal to them through union, veteran, civic, professional, political, legal defense, or other private organizations. In addition, limited arrangements may be made for off-the-job solicitations on military installations and at entrances to Federal buildings.

(f) *Prohibited Discrimination.* The Campaign is a means for promoting true voluntary charity among members of the Federal community. Because of the participation of the Government in organizing and carrying out the Campaign, all kinds of discrimination prohibited by law to the Government must be proscribed in the Campaign. Accordingly, discrimination for or against any individual or group on account of race, color, religion, sex, national origin of citizens, age, handicap, or political affiliation is prohibited in all aspects of management and execution of the Campaign. Nothing herein denies eligibility to any voluntary agency, which is otherwise eligible under this Part to participate in the Compaign, merely because such voluntary agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

§ 950.105 Federal policy on civic activity.

Federal personnel are encouraged to participate actively in the work of voluntary agencies—as members of policy boards or committees, heads of local campaign units, or volunteer workers—to the extent consistent with Federal agency policy and prudent use of official time. They are encouraged also to devote private time to such volunteer work.

§ 950.107 Preventing coercive activity.

True voluntary giving is basic to Federal fund-raising activities. Actions that do not allow free choices or even create the appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fund-raising policy. The following activities are not in accord with the intent of Federal fund-raising policy and, in the interest of preventing coercive activities in Federal fund-raising, are not permitted in Federal fund-raising campaigns:

(a) Supervisory solicitation of employees supervised;

(b) Setting 100% participation goals;

(c) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and installment pledges;

(d) Establishing personal dollar goals and quotas; and

(e) Developing and using lists of noncontributors.

Subpart B—Organization and Functional Responsibilities

§ 950.201 Development of policy and procedures.

Director, U.S. Office of Personnel Management. Under Executive Orders No. 12353 (March 23, 1982), Charitable Fund-Raising, and No. 12404 (February 10, 1983), Charitable Fund-Raising, the Director is responsible for establishing charitable fund-raising policies and procedures in the Executive Branch. With the advice of appropriate interested persons and organizations and of the Executive departments and agencies concerned, he makes all basic policy, procedural, and eligibility decisions for the program. The Director may authorize the conduct of demonstration projects in one or more CFC locations to test alternative arrangements differing from those specified in this Part for the conduct of fund-raising activities in Federal agencies.

§ 950.203 Program administration.

(a) *Federal Agency Heads.* The head of each Federal Executive department and agency is responsible for:

(1) Seeing that voluntary fund-raising within the Federal department or agency is conducted in accordance with the policies and procedures prescribed by this Part;

(2) Designating a top-level representative as Fund-Raising Program Coordinator to work with the Director as necessary in the administration of the fund-raising program with the Federal agency;

(3) Assuring full participation and cooperation in local fund-raising campaigns by all installations of the Federal agency;

(4) Assuring that the policy of voluntary giving and clear employee choice is upheld during the fund-raising campaign; and

(5) Providing a mechanism to look into employee complaints of undue pressure and coercion in Federal fund-raising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper organization channels for pursuing such complaints.

(b) *Fund-Raising Program Coordinators.* The responsibilities of Federal agency Fund-Raising Program Coordinators are to:

(1) Cooperate with the Director, the local Federal Coordinating Committee, and the Principal Combined Fund Organization in the development and operation of the program;

(2) Maintain direct liaison with the Office of the Director in the administration of the program;

(3) Publicize program requirements throughout the Federal department or agency;

(4) Answer inquiries about the program from officials and employees and from external sources; and

(5) Investigate and arrange for any necessary corrective action on complaints that allege violation of fund-raising program requirements within the Federal agency.

§ 950.205 Program coordination.

The Director coordinates the Federal agencies' administration of the fund-raising program and maintains liaison with voluntary agencies.

§ 950.207 Local voluntary agency representatives.

Federated and national voluntary agencies provide their State and local representatives with policy and procedural guidance on the Federal program. The local representatives are responsible for furnishing educational materials, speakers, and campaign supplies as may be required and appropriate to the Federal program.

§ 950.209 Local Federal agency heads.

The head of the Federal department or agency provides the heads of the local Federal offices and installations with copies of the Federal fund-raising regulations. The local Federal agency heads are responsible for:

(a) Cooperating with representatives of the local Federal Coordinating Committee, the Principal Combined Fund Organization, and local Federal officials in organizing local Federal campaigns;

(b) Undertaking official campaigns within their offices or installations and providing active and vigorous support with equal emphasis for each authorized campaign;

(c) Assuring that personal solicitations on the job are organized and conducted in accordance with the procedures set in these regulations;

(d) Assuring that authorized campaigns are kept within reasonable administrative limits of official time and expense.

§ 950.211 Local Federal coordinating committees.

(a) *Summary of duties and powers.* When there are a number of Federal agency offices and installations in the same local area, some interagency coordination is necessary in order to achieve effective community-wide campaigns and to improve general understanding and compliance with the fund-raising program. The Director assigns the responsibility for local coordination to existing organizations of Federal agency heads whenever possible and to special committees where needed. The local Federal Coordinating Committee is authorized to make all decisions within the provisions and policies established in this Part on all aspects of the local campaign, including eligibility and the supervision of the local community campaign and the Principal Combined Fund Organization. Such decisions may be appealed, however, to the Director.

(b) *Authorized Local Federal Coordinating Committee.* Coordinating responsibility is assigned by the Director to one of the following organizations:

(1) Federal Executive Boards. The boards exist in principal cities of the United States for the purpose of improving interagency coordination. They are composed of local Federal agency heads who have been designated as Board members by the heads of their departments and agencies under Presidential authority.

(2) Federal Executive Associations and Federal Business Associations, self-organized associations of local Federal officials, and the Department of Defense National Policy Coordinating Committee.

(3) Fund-Raising Program Coordinating Committee. These committees are established in communities where there is no Federal Coordinating Committee in existence. Leadership in organizing such a committee is the responsibility of the head of the local federal installation that has the largest number of civilian and uniformed services personnel. Local federal agency heads or their designated representatives serve on the committee and determine all organizational arrangements.

(c) *Employee union representation.* In order to ensure employee participation in the planning and conduct of the CFC, employee representatives from the principal employee unions of local Federal installations should be invited to serve in whatever organization exercises local coordinating responsibilities.

(d) *Fund-raising responsibilities.* Within the limits of the policies, procedures, and arrangements made nationally, the fund-raising responsibilities of local Federal Coordinating Committees are to:

(1) Facilitate local campaign arrangements. The Federal Coordinating Committee

(i) Names a high-level chairman for the authorized Federal campaigns,

(ii) Provides lists of Federal activities and their personnel strength,

(iii) Cooperates on interagency briefing sessions and kick-off meetings, and

(iv) Supports appropriate publicity measures needed to assure campaign success.

(2) Administer program requirements. The Coordinating Committee is responsible for organizing the local Combined Federal Campaign, supervising the activities of the Principal Combined Fund Organization, and acting upon any problems relating to a voluntary agency's noncompliance with the policies and procedures of the Federal fund-raising program.

(3) Develop understanding of campaign program policies and procedures and voluntary agency programs. The local Federal Coordinating Committee serves as the central medium for communicating programs, policies and procedures of the Campaign and for understanding the organizations employees are being asked to support and how employees can obtain services they may need from these organizations.

(e) *Principal Combined Fund Organization.* The local Federal Coordinating Committee will supervise a local Principal Combined Fund Organization. The Principal Combined Fund Organization will receive money from federal employees and administer the local campaign, under the direction of the local Federal Coordinating Committee.

(f) *Communication and resolution procedures through the Director, Office of Personnel Management.* Each local Federal agency head will receive fund-raising directions through his Federal agency channels and will raise questions that pertain to fund-raising activities within his Federal agency by the same means. However, the local Federal Coordinating Committee refers unresolved local fund-raising questions or problems that are common to several Federal agencies directly to the Director. the Director communicates directly with the chairman of the local Federal Coordinating Committee for information about the local fund-raising situation.

(g) *Integrity of local Federal coordinating committee.* A local Federal Coordinating Committee may not serve as a Principal Combined Fund Organization.

(h) *Universal eligibility; local lists; review.* All health and welfare charities organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3) are eligible to receive designations in any local CFC. The local Federal Coordinating Committee shall permit all such agencies to have an opportunity, as provided in the rules of the Campaign, to receive contributions from Federal employees. At its option, a local Federal Coordinating Committee may publish a list of health and welfare charities eligible to receive contributions through the local CFC. Any such list shall consist of all entities qualifying under 5 CFR 950.101(a) that meet the provisions of 5 CFR 950.211(i), that certify that they meet all applicable provisions of Subparts D and E of this Part, and that make timely application for inclusion on the local list. Where the local Federal Coordinating Committee elects to publish a list, it shall make a public announcement to that effect not later than sixty (60) days prior to the commencement of the local campaign. The announcement shall invite applications from all qualified entities for inclusion on the local list and shall specify a date by which applications must be submitted to the local Federal Coordinating Committee. If such a process is provided, then local eligibility decisions shall be made at an open meeting of the local Federal Coordinating Committee upon giving reasonable notice to interested parties. The local Federal Coordinating Committee shall give applicants reasonable notice, in accordance with local CFC practice, of the dispositions made of their applications. Applicants denied listing may petition the local Federal Coordinating Committee to reconsider its denial. Such petition for reconsideration may be dismissed as untimely unless it is received by the local Federal Coordinating Committee within ten (10) days after the petitioning party has received actual or constructive notice of the decision of which reconsideration is sought. A petition for reconsideration shall be supported by facts justifying reversal of the original decision. If the local Federal Coordinating Committee unanimously refuses to reconsider its decision, or reconsiders its decision and unanimously affirms the denial of admission, then its decision shall be final. If at least one member of the local Federal Coordinating Committee believes that the decision merits further review, or if the local Federal Coordinating Committee, have received a petition for reconsideration, fails to act thereon within ten (10) days of its actual receipt thereof, then the matter may be appealed, pursuant to the provisions of 5 CFR 950.525(e), to the Director, whose decision shall be final.

(i) *Standards of eligibility for local listing.* Any entity qualifying under 5 CFR 950.101(a), notwithstanding its location or geographic area of service, may receive a gift designated to it in writing on a prescribed CFC pledge card by an individual donor. To be manageable, however, the optional local list, if any, as permitted under 5 CFR 950.211(h), must be limited to charities that actively render their services in the local CFC area. Accordingly, any local list will include only entities that have a direct and substantial presence in the local campaign community, meaning that Federal employees and their families are able to receive, within a reasonable distance from their duty stations or homes, services that are directly provided by the voluntary agency or that demonstrably depend upon, or derive from, the specific research, educational, support, or similar activities of the particular voluntary agency. Demonstration of direct and substantial presence in the local campaign community, including adequate documentation thereof, shall at all times, and for all purposes, be the burden of the voluntary agency. Such direct and substantial presence shall be determined in the light of the totality of the circumstances in each case, including, but not necessarily limited to, consideration of the following factors:

(1) The availability of services, such as examinations, treatments, inoculations, preventive care, counseling, training, scholarship assistance, transportation, feeding, institutionalization, shelter, and clothing, to persons working or residing in the local campaign community.

(2) The presence within the local campaign community, or within reasonable commuting distance thereof, of a facility at which services are rendered or through which they may be obtained, such as an office, clinic, mobile unit, field agency, or direct provider; or specific demonstrable effects of research, such as personnel or facilities engaged therein or specific local applications thereof.

(3) The availability to persons working or residing in the local campaign community of communication with the voluntary charitable agency by means of home visits, transportation, or telephone calls, provided by the voluntary agency at no charge to the recipient or beneficiary of the service.

(4) Awareness within the local Federal community of the existence, activities, and services of the voluntary charitable agency.

Provided, that voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and that meet all the criteria set forth in this Part except for the requirement of direct and substantial presence in the local campaign community, shall be eligible for inclusion in the local list in each local campaign area of the Combined Federal Campaign.

§ 950.213 Avoidance of conflicts of interest.

Any Federal employee who serves on the Eligibility Committee, a local Federal Coordinating Committee, or as a Federal agency fund-raising program coordinator, must not participate in any decision situations where, because of membership on the board or other affiliation with a voluntary agency, there could be or appear to be a conflict of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

§ 950.301 Types of voluntary agencies.

Voluntary agencies are private, nonprofit, self-governing organizations financed primarily by contributions from the public. Some are national in scope, with a national organization that provides services at localities through State or local chapters or affiliates. Others are primarily local, both in form of organization and extent of services.

§ 950.303 Types of fund-raising methods.

(a) The methods used by voluntary agencies in public fund-raising shall be either federated or independent. A national *federated* group shall meet the same eligibility criteria as a voluntary agency, and have at least 10 local voluntary agency presences in each of at least 300 local combined campaigns. In federated campaigns, local voluntary agency representatives join contractually into a single organization for fund-raising purposes. A local United Way, united fund, community chest, or other local federated group may be considered and supported as a single agency. Local chapters or affiliates of national agencies may form local federations or be admitted as additional participating members of national federated groups.

(b) An *independent* campaign is one conducted by a local unit of a national voluntary agency through its own fund-raising organization, or by a local non-affiliated agency which otherwise meets established eligibility criteria. Voluntary agencies may conduct independent campaigns or participate in a federation.

§ 950.305 Considerations in making Federal arrangements.

(a) *On-the-Job Solicitation.* In order to have only one *on-the-job solicitation* by Federal personnel and of Federal personnel, i.e., a Combined Federal Campaign, individual appeals must be combined into a single joint campaign on behalf of charitable purposes in conformance with the policies and procedures prescribed in this Part.

(b) *Campaign Arrangements Established Nationally.* Basic campaign arrangements are established by the Director. Local Federal agency heads and Coordinating Committees are not authorized to vary from the established arrangements except to the extent that local variations are expressly provided for in this Part.

(c) *Number of Solicitations.* Not more than one on-the-job solicitation of Federal personnel on behalf of charitable purposes will be made in any year at any location, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Responsible Conduct.* In the event a voluntary agency fails to adhere to the requirements or to the policies and procedures of the Federal program, its privilege to receive gifts through the Combined Federal Campaign may be withdrawn by the Director at any time after due notice to the voluntary agency and opportunity for consultation.

§ 950.307 Definition of terms used in Federal arrangements.

(a) *Domestic Area.* The 50 United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *Overseas Area.* All other points in the world where Federal employees or members of the uniformed services are stationed.

(c) *Federated Community.* A federated community is a geographical location within the domestic area where a federated fund-raising program exists. In a federated community, recognized national voluntary agencies may join a federated campaign group or participate individually. However, voluntary agencies "supported primarily through United Ways, united funds, and community chests" shall be recognized for participation in a federated community only as participating members of the local United Way, fund, or chest.

(d) *Local non-affiliated voluntary health and welfare agency.* Local voluntary agencies that provide health and welfare services in the local area, and otherwise meet the criteria of this Part, may be non-affiliated.

§ 950.309 Federated and overseas campaigns.

(a) *Authorized Federated Groups.* (1) United Way of America and any local United Way, united fund, community chest, or other local federated group that is a member in good standing of, or is recognized by, United Way of America and that meets the requirements in these regulations shall be recognized in its local campaign area as the federated group consisting of, and representing, its member voluntary agencies that also meet these requirements. Certifications as to the requirements on behalf of local United Ways, united funds, and community chests and each member voluntary agency will be made by United Way of America.

(2) The American Red Cross, the National Health Agencies, the International Service Agencies, the National Service Agencies, and such other federated groups which shall meet the standards under this Part, shall be recognized as the federated group consisting of, and representing, their respective member voluntary agencies that also meet all requirements of this Part.

(3) Member agencies of federated groups are responsible for furnishing to their respective federated groups adequate evidence of their compliance with all requirements of this Part, and federated groups are responsible for ensuring that such adequate evidence is properly furnished and, as needed, revised, in accordance with the principles set forth at 5 CFR 950.401. In a local campaign where an optional official list of voluntary agencies is published, pursuant to 5 CFR 950.521(e)(2), then federated groups and unaffiliated voluntary agencies applying for local listing shall seasonally furnish to the local Federal Coordinating Committee their respective written certificates of compliance with all requirements of this Part. In all other cases, such certificate shall be required as provided in 5 CFR 950.521(e)(2)(v).

(b) *Local Federated Agencies.* To be eligible for participation in the Federal fund-raising program, the local federated group must be broadly representative in its board and committee membership of the community and must be making bona fide efforts to meet community needs. Requirements for participation in a local federated group must be in writing, available to the public, reasonable, and applied fairly and uniformly to all local voluntary agencies requesting participation. Procedures must be provided by the federated group for at least one review of any decision denying participation requested by a local voluntary agency. The review must be conducted by a committee or other body within the federated group that did not participate in the original decision. A written statement of the reasons for denial must be provided to the applicant voluntary agency.

(c) *"Causes."* Solicitation for a health or other "cause," e.g., for "Mental Health" or "Heart Disease," without identification of the specific voluntary agency for which the funds are sought, is prohibited. All funds collected from Federal personnel must be allocated only to specific voluntary agencies.

(d) *Designation of Federated Area.* The recognition of a local Federal Coordinating Committee by the Director designates the community served by that Committee as a recognized local campaign site. Two or more authorized local Federal Coordinating Committees are authorized to develop coordinated solicitations best suited to the needs of their localities.

(e) *Overseas Campaign*—(1) *DOD Overseas Combined Federal Campaign.* (i) A Combined Federal Campaign is authorized for all Department of Defense activities in the overseas areas during a six-week period in the fall. Any national voluntary agency that the local Federal Coordinating Committee for the DOD Overseas CFC determines, in its discretion, most likely meets the definitions and standards set forth herein for the Principal Combined Fund Organizations shall be eligible to be designated as the Principal Combined Fund Organization for the DOD Overseas CFC. The American Red Cross, the International Service Agencies-Overseas, the National Health Agencies, the United Service Organization, and such other federated groups that shall meet the standards under this Part shall be authorized privileges on behalf of their member voluntary agencies that also meet all requirements of this Part. The local Federal Coordinating Committee for the DOD Overseas CFC shall designate the Principal Combined Fund Organization for the Overseas Campaign, which may be the National Voluntary Organizations Campaign Committee.

(ii) Contributors to the DOD Overseas Combined Federal Campaign designate their gifts to one or more agencies or the Principal Combined Fund Organization. The Principal Combined Fund Organization for the overseas campaign shall pay the amounts collected directly to the designated voluntary agencies, less "shrinkage" and the processing percentage, if any, that is approved in advance of the campaign by the Federal official in the overseas area responsible for the local campaign arrangements.

(2) *Local Voluntary Agency Campaigns.* The heads of overseas offices and installations may, at their discretion, permit their military and civilian personnel to solicit each other on behalf of local voluntary agencies. Such campaigns will be conducted in accordance with the basic policies and procedures of the Federal program and at times which do not conflict with the DOD overseas Combined Federal Campaign period. The standards in this Part will be used as guidelines. Federal leadership in organizing such campaigns will be assumed by the head of the overseas Federal establishment that has the largest number of Government personnel in the campaign area.

(3) *Optional Participation by Certain Civilian Agencies.* Federal civilian departments and agencies that have traditionally considered their overseas personnel as members of the National Capital Area for fund-raising purposes may continue this practice.

(4) *On-Base Health and Welfare Activities.* On-base morale, welfare and recreational activities may be supported from CFC funds.

§ 950.311 Off-the-job solicitation at places of employment.

Voluntary agencies may be authorized off-the-job solicitation privileges at places of Federal employment under such reasonable conditions as may be specified by the local head of the Federal installation involved, provided that such conditions are not inconsistent with this Part. Dual solicitation conflicts with the objective of a combined campaign and is not authorized. Accordingly, this privilege shall be extended only under the following circumstances:

(a) *Family Quarters on Military Installations.* Voluntary agencies may be permitted to solicit at private residences or at similar on-post family public quarters in unrestricted areas of military installations at the discretion of the local commander. However, such solicitation may not be conducted by military or civilian personnel in their official capacity during duty or non-duty hours, nor may such solicitation be conducted as an official command-sponsored project. This restriction is not intended to prohibit or to discourage military and civilian personnel from participating as private citizens in voluntary agency activities during their off-duty hours.

(b) *Public Entrances of Federal Buildings and Installations.* Voluntary agencies that engage in limited or specialized methods of solicitation—for example, the use of "poppies" or other similar tokens by veterans organizations—may be permitted to solicit at entrances or in concourses or lobbies of Federal buildings or installations normally open to the general public. Solicitation privileges will be governed by the rules issued by the General Services Administration pursuant to the Public Buildings Cooperative Use Act of 1976, as amended, or other applicable Government legal authority.

Subpart D—Requirements for National Voluntary Agencies

§ 950.401 Purpose.

These requirements are established to ensure that the funds contributed by Federal personnel will be used for the stated purposes of the recipient voluntary agencies. The Office of Personnel Management acknowledges that voluntary agencies are regulated, as to the integrity of their operations and finances, by State and local governments, by the federated groups of which they may be members, and by the discipline of the marketplace. OPM and local Federal Coordinating Committees will therefore be guided by the principle of self-certification and will accord a presumption of validity to the written representations of voluntary agencies and federated groups that the requirements of this Part are satisfied.

§ 950.403 General requirements.

(a) *Type of Agency.* Only nonprofit, tax-exempt, charitable organizations, supported by voluntary contributions from the general public and providing direct and substantial health and welfare services through their national organization, affiliates or representatives are eligible for approval. All such services must be consistent with the policies of the United States Government.

(b) *Integrity of Operations.* Funds contributed to such organizations by Federal personnel must be effectively used for the announced purposes of the voluntary agency.

(c) *National Scope.* A national voluntary agency is one that:

(1) is organized on a national scale with a national board of directors that represents its constituent parts, and exercises close supervision over the operations and fund-raising policies of any local chapters or affiliates;

(2) has earned goodwill and acceptability throughout the United States, particularly in cities or communities within which or near which are Federal offices or installations with large numbers of personnel; and

(3) has national scope, that is, scale, goodwill, and acceptability, which may be demonstrated as follows:

(i) By a voluntary agency's provision of a service in many (c. one quarter) States, or in several foreign countries, or in several parts of one large foreign nation;

(ii) By derivation of contributor support from many parts of the Nation;

(iii) By the extent of public support and the number and the geographical spread of contributors; and

(iv) By the national character of any public campaign, which may be shown by an applicant having at least 200 local chapters, affiliates, or representatives that promote its campaign.

(d) *Type of Campaign.* Approval will be granted only for fund-raising campaigns in support of current operations. Capital fund campaigns are not authorized.

§ 950.405 Specific requirements for national agencies.

(a) *Corporate and Tax Status.* A voluntary agency must be one:

(1) That is a voluntary charitable health and welfare agency as defined in 5 CFR 950.101;

(2) That is voluntary and broadly supported by the public, meaning (i) that it is organized as a not-for-profit corporation or association under the laws of the United States, a State, a territory, or the District of Columbia; (ii) that it is classified as tax-exempt under 26 U.S.C. 501(c)(3), and is eligible to receive tax deductible contributions under 26 U.S.C. 170; and (iii) that, with the exception of voluntary agencies whose revenues are affected by unusual or emergency circumstances, as determined by the Director, it has received at least 50 percent of its revenues from sources other than the Federal Government or at least 20 percent of its revenues from direct and/or indirect contributions in the year immediately preceding any year in which it seeks to participate in the Combined Federal Campaign;

(3) That is directed by an active board of directors, a majority of whose members serve without compensation, that adopts and employs the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations;* that prepares and makes available to the general public an annual financial report prepared in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and is certified by an independent certified public accountant; that provides for an annual external audit by an independent certified public accountant;

(4) That can demonstrate, if its fund-raising and administrative expense is in excess of 25 percent of total support and revenue, that its actual expense for those purposes is reasonable under all the circumstances in its case;

(5) That ensures that its publicity and promotional activities are based

upon its actual program and operations, are truthful and nondeceptive, and include all material facts.

(b) *Fund-Raising Practice.* The voluntary agency's publicity and promotional activities must assure protection against unauthorized use of its contributors lists; must permit no payment of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fund-raising; and must permit no general telephone solicitation of the public.

(c) *Reports*—(1) *Annual Report.* The voluntary agency must prepare an annual report to the general public that includes a full description of the voluntary agency's activities and accomplishments and the names of chief administrative personnel.

(2) *Combined Reports.* Voluntary agencies which represent more than one subunit must prepare a combined annual financial report to the general public in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations.* The combined report shall include all income and expenditures for the national operations and all chapters, committees, affiliates, or satellites.

(d) *Reporting by American Red Cross.* For purposes of this Part, the American Red Cross and its chapters are recognized as operating an accounting and financial system in substantial compliance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and certification to this effect by local chapters is not required.

Subpart E—The Local Combined Federal Campaign

§ 950.501 Local voluntary agencies.

(a) A local voluntary agency shall meet the same criteria as a national voluntary agency, except national scope. Each voluntary agency shall certify to its compliance with these criteria, or shall have such certification submitted on its behalf by the federated group, if any, of which it is a member, in accordance with the principles of internal integrity set forth at 5 CFR 950.401.

(b) An on-base morale, welfare and recreational activity authorized by a military base commander may be supported from CFC funds.

§ 950.503 Participation in Federal campaigns by local unaffiliated agencies.

Arrangements shall be made by the Central Receipt and Accounting Point to distribute contributions to local unaffiliated voluntary agencies, after appropriate adjustments are made for "shrinkage" and approved administrative costs.

§ 950.505 Responsibility of local Federal coordinating committees.

Each local Federal Coordinating Committee is required to organize a Combined Federal Campaign in the local area for which it has fund-raising responsibility. The heads of Federal departments and agencies will request their local officials to cooperate fully with the decisions of the Federal Coordinating Committee in all aspects of CFC arrangements. The local Federal Coordinating Committee makes all final decisions on the local campaign, subject to appeal to the Director.

§ 950.507 Local CFC plan.

(a) *CFC as uniform fund-raising method.* The Combined Federal Campaign is the only authorized fund-raising method in all areas in the United States in which 200 or more Federal employees are located. All voluntary agencies wishing to participate in fund-raising within the Federal service must do so within the framework of a local Combined Federal Campaign.

(b) *Non-participation.* In the event that any voluntary agency does not follow these regulations for participation in a local CFC, fund-raising privileges in local Federal establishments are forfeited during that fiscal year.

(c) *Red Cross participation.* In local communities where the American Red Cross is not a participating member of the local United Way, it will be regarded as a separate campaign organization in the combined campaign. American Red Cross chapters have independent authority with respect to fund-raising policy, so responsibility for deciding on participation in the

CFC rests with the local chapter board of directors. As with the other national organizations, in the event local American Red Cross chapters choose not to participate in the CFC, they are not authorized to have a separate campaign in local Federal offices or installations during the fiscal year involved, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Exceptions in areas of fewer than 200 Federal employees.* Where there are fewer than 200 Federal employees in the local campaign area, it may not be practicable to hold a Combined Federal Campaign. Therefore, in such areas local Federal officials are not required to arrange for a Combined Federal Campaign. However, if they believe that it would be desirable from the standpoint of the local community or the Federal Government to have such a campaign, they may contact the Director to arrange a Combined Federal Campaign regardless of the number of employees involved. Where a CFC is not conducted because of lack of sufficient Federal employees, the local united fund is authorized to solicit within the Federal establishment during the fall of the year and other Federated groups are authorized to conduct a separate spring campaign. Where the American Red Cross is not a member of the local united fund and the area will not have a CFC, then the Red Cross may conduct an independent campaign during the month of March. However, payroll deductions for charitable contributions are only authorized in conjunction with Combined Federal Campaigns.

§ 950.509 Organizing the local campaign: The Principal Combined Fund Organization.

The Local Federal Coordinating Committee shall organize the local community campaign. It will appoint a campaign chairman who will carry out campaign duties in conformance with the policies and procedures prescribed in this Part. From among the federations with national scope, the local Federal Coordinating Committee shall select a Principal Combined Fund Organization to manage the campaign and to serve as fiscal agent. In doing so the Federal Coordinating Committee shall select whichever applicant organization it finds to be the local federated group in the CFC geographic area that provides through one specific, annual public solicitation for funds the greatest support for charitable agencies that depend on public subscriptions for support; and that, in the judgment of the Federal Coordinating Committee, can most effectively provide the necessary campaign services and administrative support for the successful Campaign.

(a) In deciding whether an organization is the Principal Combined Fund Organization in the CFC geographic area, the Federal Coordinating Committee will consider:

(1) The number of local charitable voluntary agencies or affiliates in the CFC geographic area that rely on the applicant organization for financial support and that meet the prescribed eligibility criteria for participation in the CFC;

(2) The number of dollars raised by the applicant organization in the CFC geographic area during its last completed annual public solicitation for funds;

(3) The percentage of such dollars disbursed to the charitable voluntary agencies;

(4) The local capacity of the applicant organization to provide the necessary campaign services and administrative support (including operation of the Central Receipt and Accounting Point) to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this Part; and

(5) Whether the organization meets the requirements specified in 5 CFR 950.401, 950.403, and 950.405.

(b) An organization seeking to be designated the Principal Combined Fund Organization in a CFC area shall submit its application for such designation to the local Federal Coordinating Committee for approval. All such applicants must pledge to manage the campaign fairly and equitably; to conduct organization operations separate from other voluntary agency operations; to consider advice from, be responsible to reasonable requests for information from, and to consult with other agencies; and to be subject to the decisions and supervision of the local Federal Coordinating Committee and the Director. Upon submission of a complaint by a local Federal Coordinating Committee or a federated or national voluntary agency, the Director may revoke the designation as a Principal Combined Fund Organization if in his discretion he finds these pledges are not fulfilled.

(c) Applications shall include the following:

(1) The names of the voluntary agencies in the area that rely on the applicant organization for financial support and that meet the eligibility criteria set in this Part;

(2) The boundaries of the area covered by the public donation solicitation of the applicant organization;

(3) The number of dollars raised in the CFC geographic area by the applicant during its last completed annual public solicitation for funds;

(4) The percentage of such dollars disbursed to the charitable agencies;

(5) Agreement to transmit contributions, as designated by Federal employees, to charitable orgnizations in the local CFC (minus only "shrinkage"—that is, uncollectible pledges and gifts—and the approved percentage for administrative cost reimbursement);

(6) Certification that it, and its participating member organizations, are in compliance with all applicable requirements specified in this Part;

(7) Percentage, if any, proposed to be charged by the applicant organization for reimbursement for administrative costs; and

(8) Statement that the applicant organization is organized to provide the necessary campaign services and support to the local Federal Coordinating Committee for a successful Federal compaign in conformance with the policies and procedures prescribed in this Part.

(d) Federated groups, member agencies of federations, and other voluntary agencies shall be eligible to receive designations.

(e) The Principal Combined Fund Organization shall provide a form for the contributor to indicate any amounts he may wish to designate to affiliated and unaffiliated beneficiaries. The Principal Combined Fund Organization shall pay the amount collected to the employee-designated beneficiary agency less "shrinkages" and the amount necessary to reimburse the Principal Combined Fund Organization for administrative expenses.

(f) The percentage, if any, charged for administrative cost reimbursement must be approved in advance by the local Federal Coordinating Committee and published in the campaign literature.

(g) All contributions not designated to specific voluntary agencies or specific federated groups shall be deemed to have been designated to the Principal Combined Fund Organization. A statement of the fact shall be clearly printed in a distinctive typeface in ink of a distinctive color on the face of each pledge card, which shall also state the name of the federated group that is the Principal Combined fund Organization in that local Campaign.

(h) The Principal Combined Fund Organization shall issue a report to the local Federal Coordinating Committee and other interested parties within a reasonable time following the campaign setting forth the following information:

(1) Amounts contributed and pledged,

(2) Number of contributors,

(3) Amounts designated to each participating federated group and voluntary agency,

(4) Amount designated to the Principal Combined Fund Organization,

(5) Amounts of gifts and pledges cancelled and returned, and

(6) Costs of administering the campaign, including the Central Receipt and Accounting Point.

(i) *CFC Committee.* Where necessary, the local Federal Coordinating Committee may designate a committee from among its principal members, called the CFC Committee, to give top leadership and direction to the planning, conduct and evaluation of the local combined campaign. The Federal Coordinating Committee, however, may not redelegate any final authority for the campaign to the CFC Committee. The Chairman of the Campaign need not be the Chairman of the organization designated as the local Federal Coordinating Committee.

(j) *Action Steps by the Local Federal Coordinating Committee.* The Chairman of the local Federal Coordinating Committee is not authorized to establish a Local Joint Work Group of Federal representatives and representatives of the Principal Combined Fund Organization. The Chairman shall direct the Principal Combined Fund Organization to assemble necessary information and data, and to submit a plan detailing materials and a timetable for campaign arrangements. This shall include the dates for preparation, printing and distribution of materials, kick-offs, training sessions, report meetings and award ceremonies. All of these, including the specific materials to be used, shall be submitted to the full local Federal Coordinating Committee for approval on a day to be announced broadly to participating voluntary agencies and federated groups and to the Director. An adequate opportunity shall be provided for participating federated groups and voluntary agencies to review and comment on all proposals.

(k) *Loaned Executive Program.* One or more loaned Federal executives may be used in a Combined Federal Campaign. The Loaned Executive Program was authorized by President Nixon in a memorandum to heads of departments and agencies dated March 3, 1971. A Loaned Executive may be detailed from his agency on a full or part-time basis, for a specific period of time, to conduct or assist in the operation of a Combined Federal Campaign. The employing agency will decide who will serve as a Loaned Executive, if anyone, and the length of the detail. Executives may not be loaned or assigned to any specific voluntary organization but only to the official Combined Federal Campaign group. When assigned to the CFC, the executive shall be placed on administrative leave.

§ 950.511 Basic local CFC groundrules.

(a) The arrangements outlined in 5 CFR 950.511 through 950.525 constitute basic ground rules for the local Combined Federal Campaign. Certain local variations are permissible if specifically authorized in this Subpart. However, any modification of groundrules in specific instances must be requested by Federal Coordinating Committees from the Director. Modifications will be granted only in the most exceptional circumstances.

(b) The local Federal Coordinating Committee will approve the:

(1) *Campaign Name.* The name will include the words "Combined Federal Campaign;" the year for which contributions are solicited; and approximate identification of the locality; as for example: "1984 San Antonio Area Combined Federal Campaign."

(2) *Campaign Period.* The solicitation period may be any time between September 1 and November 30.

(3) *Campaign Area.* The exact geographical area to be covered by a local campaign will be determined by the Director, taking into account past practice and the feasible scope for a single, coordinated campaign. The jurisdiction of the organization named as the local Federal Coordinating Committee will set the basic area of the Campaign, based upon past practices. Any changes in campaign area must be approved by the Director.

§ 950.513 Contributions.

(a) The contributor's information leaflet will clearly state that the Federal employee is encouraged to direct his gift to specific voluntary agencies. A single form of pledge card and leaflet-brochure will be produced under standards set in this Part, and approved by the Director. The leaflet will explain that when such gifts are earmarked to a specific recipient, the Principal Combined Fund Organization will remit such funds, less approved administrative costs, in accordance with the donor's wishes as those funds are collected. The leaflet will also clearly state that when the Federal employee decides not to designate, the gift will be deemed designated to the Principal Combined Fund Organization for distribution by it. The leaflet should contain no text stating or implying that any Government official will determine the distribution of any gifts deemed designated to the Principal Combined Fund Organization.

(b) Several boxes will be provided on the pledge form so that donors may indicate their choices, if any, to contribute to one or more voluntary agencies or federations. A minimum of three (3) boxes, each no less than 1½ inches in length and no less than ⅛th of an inch in height, will be printed on the face, and on all copies, of the pledge card. Separate designation slips are not authorized under any circumstances. The pledge card must be arranged so that each Federal employee receives the pertinent CFC information and the pledge card as a single package (as examples, inserted in a slot, or a pocket in the contributor's information leaflet). In addition to the statement required by 5 CFR 950.509(g), a statement in bold and distinctive type will be printed to read: "Any health and welfare charity recognized as tax-exempt by the Internal Revenue Service under 26 U.S.C. 501(c)(3) may be designated in the box provided on this card."

(c) In the event that a donor attempts to contribute to an entity that is not a voluntary agency within the meaning of 5 CFR 950.101(a), that is not tax-exempt under 26 U.S.C. 501(c)(3), or that cannot, with minimal reasonable effort, be identified or located, then the donation shall be cancelled and the funds collected, if any, shall be promptly returned to the donor.

§ 950.515 Dollar goals.

(a) A dollar goal for the overall local combined campaign is recommended. Generally, it provides a focus for group spirit and unity of purpose that contributes materially to success. By apportioning the goal equitably among the Federal offices and installations, each Federal agency shares responsibility in the team effort and has a mark by which to gauge its progress.

(b) In developing the proposed goal, the local Federal Coordinating Committee should take into account past giving experience in local Federal campaigns, the needs and reasonable expectations of the voluntary agencies in the current campaign situation, and the probability of a substantial increase in the level of giving due to the single campaign and payroll payment plan. The objective should be to set a goal that is attainable, which can be exceeded in an enthusiastic and purposeful campaign.

(c) Dollar goals are not required. An alternative approach is to rely on "suggested giving" as the principal incentive. For example, the "goal" could be 75 percent participation at the suggested giving level.

§ 950.517 Suggested giving guides and voluntary giving.

(a) Suggested giving guides for contributions are authorized for local campaigns. Guides for cash giving or direct-payment pledges may be included in terms of percent of annual income, number of hours pay, or suggested size of gift in relation to various income levels. Guides may be printed in the contributor's leaflet or on the pledge form. They will be accompanied by a statement explaining that the guide is provided because employees often ask for one, but that the decision to give and the amount is up to each employee.

(b) Federal agencies are not authorized to furnish individual employee suggested giving guides based upon the employee's specific pay or grade; a guide of this kind is comparable to an individual quota or assessment, which is prohibited.

(c) The contributor's leaflet or the pledge form must include the express statement that the employee has the right to make his gift confidentially in a sealed envelope which will be delivered unopened to the Combined Federal Campaign headquarters.

§ 950.519 Central receipt and accounting for contributions.

(a) The Principal Combined Fund Organization shall provide and administer the Central Receipt and Accounting Point or it may arrange for an appropriate financial institution to provide such service on its behalf, under the direction of the local Federal Coordinating Committee. Any charges by such institution to provide the necessary services are the responsibility of the Principal Combined Fund Organization and should be included in the latter organization's administrative costs factor.

(b) The Central Receipt and Accounting Point will tabulate all contributions designated to specified agencies on the pledge cards and then tabulate the contributions designated to the Principal Combined Fund Organization. The amounts payable to the specified voluntary agencies are subject to deduction of "Shrinkage" and of the approved percentage, if any, for reimbursement of administrative costs to the Principal Combined Fund Organization.

(c) Provision must be made by the Principal Combined Fund Organization for the audit of CFC funds. If the CFC is over $100,000, an audit must be performed by a certified public accountant. Copies of the audits must be submitted to appropriate local Federal officials and made available for inspection by any voluntary agency or federation participating in the CFC.

(d) In addition to the usual method of cash contribution and direct payment of pledges, the use of voluntary payroll withholding is authorized for members of the uniformed services and civilian personnel at CFC locations. Local voluntary agencies may decide whether or not to provide for direct payment of pledges; however, cash contributions must be permitted. Keyworker collection of installment pledges is prohibited.

§950.521 Campaign and publicity materials.

(a) Campaign and publicity materials will be developed in the local area under direction of the local Federal Coordinating Committee, and will be printed and supplied by the Principal Combined Fund Organization. All disputes over materials will be resolved by the local Federal Coordinating Committee, except that failure to conform to this Part or to any other directive of the Director may be appealed to the Director. All publicity materials must have the approval of the local Federal Coordinating Committee before being used.

(b) Distribution of any bona fide education material of the voluntary agencies or provision of other services to employees at Federal establishments must be handled through Federal agency personnel, or occupational health, or other appropriate units, and not the CFC coordinators. Voluntary agencies are encouraged to publicize their activities outside Federal facilities, to broadcast messages aimed at Federal employees in an attempt to solicit their contributions, through media and other outlets, and to communicate with Federal personnel in writing through the United States Mail, including United States Mail addressed to them at their Federal workplaces, as long as these do not interfere with Federal Government activities. Federated groups participating in a local campaign are authorized and encouraged to publish informational brochures accurately describing the organizations and activities of their respective member voluntary agencies, and to send such brochures through the United States Mail to Federal personnel at Federal workplaces. Local Federal Coordinating Committees are further authorized to permit the distribution by voluntary agencies of brochures to Federal personnel in public areas at or near Federal workplaces in connection with the local CFC, provided that the manner of distribution accords equal treatment to all voluntary agencies furnishing such brochures for local use, and further provided that no such distribution shall utilize Federal personnel or interfere with Federal Government activities. Nothing herein shall be construed to require a local Federal Coordinating Committee to distribute or arrange for the distribution of any material other than the contributor leaflet and pledge form required by this Part.

(c) A single Contributor's Information Leaflet, and a single, joint Pledge Form and Payroll Withholding Authorization (the latter preferably to be placed in an insert slot or otherwise assembled in the former) are to be distributed by keyworkers to each potential contributor. The Pledge Form and Payroll Withholding Authorization must be one form. All CFC literature, keyworker solicitors, and materials released as a part of the campaign must inform employees of their right to make a choice. Employees will be informed that while the Federal Government encourages its employees to make a choice, it does not mandate that they choose.

(d) Campaign materials must constitute a simple and attractive package that has fund-raising appeal and essential working information. Treatment should focus on the combined campaign and homogeneous appeal without undue use of voluntary agency symbols or other distractions that compete for the contributor's attention. Extraneous instructions concerning the routing of forms, tallying of contributors, etc., which are primarily for keyworkers, must be avoided.

(e) Specific campaign and publicity materials:

(1) *Contributor's Leaflet.* (i) This leaflet will be the only informational material distributed to individual contributors. It will describe the CFC arrangement, explain the payroll deduction privilege, and will include the information required by 5 CFR 950.513. The leaflet should be constructed to contain a pocket or a slot to hold the CFC pledge form.

(ii) The leaflet will provide instructions about how an employee may obtain more specific information about voluntary agencies participating in the campaign, their programs, and their finances. It will also inform employees of their right to pursue complaints of undue pressure or coercion in Federal fundraising activities. The leaflet will advise civilian employees to consult with their personnel offices and military personnel with their commanding officers to identify the organization handling such complaints in their respective Federal agency.

(iii) A Privacy Act notice must be printed on the leaflet.

(iv) Every leaflet shall also contain the following statement: "All contributions not designated to specific voluntary agencies, or specific federated groups, shall be deemed to have been designated to the Principal Combined Fund Organization, which shall, through its eligibility committee of local citizens, choose charities to receive these funds based upon its best perception of community, national and international needs."

(v) The contributor information leaflet must also state that any health or welfare agency organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3), is eligible for a contribution; that the contributor must clearly identify the beneficiaries and amounts of his gifts; that his gifts are tax deductible; that he has the right not to be improperly influenced in making his decisions regarding the making or withholding of contributions in the CFC; and that he must make his gifts, if any, using the prescribed CFC pledge form. Other than the name of the Principal Combined Fund Organization, which must be stated in the contributor information leaflet in the same limited manner required by 5 CFR 950.509(g) with respect to the pledge form, and shall not otherwise be stated, the contributor information leaflet shall not contain the name of any voluntary charity nor shall it otherwise contain any material that might influence the donor's choice of particular beneficiaries. The leaflet may contain general words of encouragement of the support of private charity, including quotations of the President of the United States, the Director, other Federal officials, and prominent personalities, *provided* that no personality who is not a Federal official shall be featured in the leaflet if he would be, under all the circumstances, reasonably associated by a donor with any particular voluntary agency.

(2) *Optional local list.* At its option, the local Federal Coordinating Committee may include a list of voluntary agencies. This will strictly be at its own option if, in its view, it would facilitate donor understanding. If this option is chosen, the following rules apply:

(i) The leaflet will list the voluntary agencies approved by the local Federal Coordinating Committee, with only the title of the organization printed and without any statement about, or on behalf of, any agency. Opposite the name of each voluntary agency, a number will be provided beginning with the number 101 so that contributors desiring to indicate a choice of an agency or agencies to which they wish their gift to be directed may insert such number or numbers in the designation boxes provided for that purpose on the pledge form. Each voluntary agency that is a member of a federated group shall be entitled, at its local option, to have that group's initials noted in parentheses following the name of the voluntary agency.

(ii) The listing of voluntary agencies shall be exclusively in strict alphabetical order, beginning with the letter "A," by name of voluntary agency.

(iii) Federated groups shall be listed, in an order set by lot each year, at the end of the list of voluntary agencies, under the title "campaign groups," with their respective identification numbers. The federated group that is the Principal Combined Fund Organization shall be so identified.

(iv) The following statement shall be printed, following the list of federated groups, in bold letters and distinctive type: "The above list is not an exhaustive list of the voluntary health and welfare charities to which you may designate all or part of your contribution. The list is illustrative only. Any health or welfare charity recognized as tax-exempt by the Internal Revenue Service under 26 U.S.C. 501(c)(3) may be designated on the blank space provided on the pledge card. You must write the full and correct name of the charity that you designate as the recipient of your gift. Please be sure that your writing is legible. If you write in the name of an unqualified organization or of an organization that cannot be located, or if your writing cannot be read, then your pledge or gift will be cancelled and returned to you."

(v) The Principal Combined Fund Organization upon receiving pledge forms containing designations to specified agencies whose names are written-in by contributors shall request each agency so designated to certify in writing that it is a charitable health and welfare entity organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3) and that it complies with all standards of integrity of operations and reporting required by this Part. Such certification by an employee-designated beneficiary agency shall be sufficient basis for the Principal Combined Fund Organization to proceed with the payment process. This process of self-certification comports with the principles set forth at 5 CFR 950.401.

(3) *PCFO report in lieu of optional local list.* In the event, and only in such event, that the local Federal Coordinating Committee elects not to provide an optional local list as permitted by 5 CFR 950.521(e)(2), the Principal Combined Fund Organization shall provide a report of all organizations that were desginated by donors or by the Principal Combined Fund Organization to receive funds from the local campaign held in the preceding year. Such report shall consist of a roster of the beneficiary organizations, grouped by category of service, listed within each category in strict alphabetical order, and accompanied by a description (not to exceed 25 words and figures) of each organization's charitable programs; an organization may, at its election, note in parentheses after its name the initials of the participating federated group, if any, to which it belongs. Such report shall clearly state that it is a list of the recipients of all valid donations made in the immediately preceding campaign; that it is not an exhaustive list of organizations eligible to receive gifts through the CFC; and that the presence or absence of the name of any organization implies neither governmental approval nor governmental disapproval of any group or program. Such report shall conform, in all respects not inconsistent with the express provisions of this subsection, with the requirements of fairness and the safeguards against coercion and undue influence that are set forth in 5 CFR 950.521(e)(1). The Principal Combined Fund Organization shall endeavor to transmit a copy of such report individually to each Federal employee in the local campaign area; in the event, however, that such form of distribution would not be cost effective or timely or would be impracticable, then the Principal Combined Fund Organization shall provide such report to Federal employees in the local campaign area by, at a minimum, publishing such report at least once within the 10 days immediately preceding the commencement of the local campaign

in a newspaper of general circulation within the local Federal community; making such report available to each key-worker to assist individual donees; and maintaining copies of the report available for public inspection during reasonable business hours at every office of the Principal Combined Fund Organization in the local campaign area. The Principal Combined Fund Organization shall submit the report to the local Federal Coordinating Committee for its review and approval prior to any publication or issuance thereof.

(4) *Pledge form and payroll withholding authorization.* (i) A copy of the pledge form shall be used to inform the Central Receipt and Accounting Point for the local area of the designation decisions. The format for the pledge card is prescribed by the Director and is available from the Office of Personnel Management.

(ii) One copy of this form will be used as the Payroll Withholding Authorization. When completed, this copy will go to the contributor's payroll office. Since there are some 1,400 separate payroll offices serving Federal personnel, the withholding authorization must be in a standard format and bear adequate identification of the local campaign.

(iii) The name and mailing address of the local CFC Central Receipt and Accounting Point will be printed at the top of the form. The name must be the same as that for the campaign and include the year: for example, "1984 San Antonio Area Combined Federal Campaign."

(iv) The box entitled "Identification No." will be used for the contributor's Social Security number, except in the case of Federal agencies that have a separate payroll identification numbering system. There is no requirement to use this space and it should only be used when it aids in accounting or campaign management.

(f) Other campaign materials that are authorized include:

(1) *Chairman's Guide.* For use of campaign chairmen in individual Federal installations;

(2) *Keyworker's Guide.* Instructions for keyworkers about CFC arrangements, solicitation methods, and forwarding procedures;

(3) *Keyworker's Report Envelope.* With tally sheets (which may be printed on the envelope) on which the keyworker will list the names of contributors or the number of confidential envelopes enclosed;

(4) Miscellaneous Campaign Items. Contributor's receipts, window stickers, posters, progress charts, awards, etc.;

(5) *Publicity Items.* News stories and fillers for the local press and house organs, employee letters, speeches of campaign leaders, division chairmen, films, television and radio material supporting the campaign; and

(6) *Awards.* To recognize campaign achievements by Federal agencies, Federal agency chairmen, etc. Awards should be identified as "Combined Federal Campaign" awards. The presentation of awards and plaques by individual voluntary agencies or categories of voluntary agencies for CFC accomplishments is not permitted.

(g) National materials provided and made available for use by local CFCs will be developed by an organization named by the Director. The Director will provide opportunity for comment on such materials by interested parties prior to approval. He must approve all material prior to use.

§ 950.523 Payroll withholding.

The following policies and procedures are authorized for payroll withholding operations in accordance with Office of Personnel Management regulations in 5 CFR Part 550, Pay Administration.

(a) *Applicability.* Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local Combined Federal Campaign organizations.

(b) *Allotters.* The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a Combined Federal Campaign when

an appropriate official of the employing Federal agency determines the employee will continue his employment for a period sufficient to justify an allotment. (This includes part-time and intermittent employees who are regularly employed.)

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than 3 months). (The Department of Defense has modified its military pay allotment regulations to authorize allotments for CFC charitable contributions by uniformed service members.)

(c) *Authorization.* (1) Allotments will be wholly voluntary and will be based upon contributors' individual written authorizations.

(2) Authorization forms in standard format will be printed by the Principal Combined Fund Organization at each location. The forms and other campaign materials will be distributed to employees when charitable contributions are solicited.

(3) Completed payroll withholding authorization forms should be transmitted to the contributors' servicing payroll offices as promptly as possible, preferably by December 15. However, if forms are received after that date they should be accepted and processed by payroll offices.

(d) *Duration.* Authorizations will be in the form of a term allotment for one full year—26, 24 or 12 pay periods depending upon the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. (The standardization of beginning and ending dates, except for individual discontinuances, is intended to simplify payroll operations and minimize costs.) However, the fact that an employee or military member will not be on duty for the full year should not preclude acceptance of a payroll allotment if he has sufficient time in service remaining to make the allotment practicable. Three months or more would be considered a reasonable period of time for which to accept an allotment.

(e) *Amount.* (1) Allotters will make a single allotment that is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimum amount for allotment will be determined by the local Federal Coordinating Committee but will be not less than $1.00 bi-weekly, with no restriction on size of increment above that minimum.

(3) No change of amount will be authorized during the term of an allotment.

(4) For the purpose of simplicity and economy in payroll operations, no deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustment will be made in subsequent periods to make up for deductions missed.

(f) *Remittance.* (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Central Receipt and Accounting Point at each location for which the payroll office has received allotment authorizations.

(2) The check will be accompanied by a statement identifying the agency and the number of employee deductions. There will be no listing of allotters included or of allotter discontinuances.

(g) *Discontinuance.* (1) Allotments will be discontinued automatically:

(i) On expiration of the one-year withholding period; or

(ii) On death, retirement, or separation of allotter from the Federal service, whichever is earlier.

(2) The allotter may revoke his authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer.* (1) When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different department or agency, his allotment authorization will be transferred to the new payroll office.

(2) When there is a delay in receiving the transferred authorization in the new payroll office, or when the al-

lotter moves to a location covered by another CFC, the allotter should be permitted to complete a new authorization for the remainder of the one-year withholding period, which will supersede and revoke his previous authorization.

(3) When the allotter moves to a location not covered by a CFC, the allotment will automatically be terminated unless expressly continued by the individual.

(i) *Accounting.* (1) Federal payroll offices will oversee establishment of individual allotment accounts, deductions each pay period, and reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The Principal Combined Fund Organization is responsible for the accuracy of transmittal of contributions. It shall transmit at least monthly for campaigns of $100,000 or more or quarterly if less than that amount, minus only the shrinkage factor and approved percentage for administrative cost reimbursement. It shall remit contributions, less approved administrative costs and shrinkage, to each agency or to the federated group, if any, of which the agency is a member if all member agencies of that federated group, participating in the local campaign, agree. It shall notify the federated groups, as soon as practicable after the completion of the campaign (but in no case more than 60 days thereafter), of the amounts, if any, designated to them and their member agencies and of the amounts of deemed-designated contributions, if any, allocated to them and their member agencies.

(3) Federated and national voluntary agencies, or their designated agents, will accept responsibility for (i) the accuracy of distribution among the voluntary agencies of remittances from the Principal Combined Fund Organization; and (ii) arrangements for independent audit agreed upon by the participating voluntary agencies.

§ 903.525 National coordination and reporting.

(a) The Office for Regional Operations, U.S. Office of Personnel Management, is responsible under the Director for CFC arrangements.

(b) Each local Federal Coordinating Committee shall notify the Office for Regional Operations of OPM of its campaign areas, chairman's name, address, and telephone number, and the address of its Central Receipt and Accounting Point.

(c) All chairmen of local Federal Coordinating Committees shall furnish reports of campaign results to the Office of Regional Operations of OPM no later than January 15 of each year. OPM will furnish a reporting format to local Federal Coordinating Committees prior to that date requesting information on the results of the campaign, including the following:

(1) Basic data (number solicited, number of contributors);

(2) Payroll deductions (number authorizing, total pledged);

(3) Designations;

(4) Returned or cancelled gifts or pledges;

(5) Amount of undesignated receipts received by Principal Combined Fund Organization;

(6) Campaign costs; and

(7) Narrative summary evaluation of CFC arrangement based upon campaign experience. Copies of the report will be furnished to the local Federal Coordinating Committee, the Principal Combined Fund Organization, and participating federated groups. A copy will be made available for inspection by participating voluntary agencies and Federal employees.

(d) All local activities will be coordinated with the national campaign under guidance and procedures issued by the Director through the Federal Personnel Manual system and a handbook of instructions (or other appropriate issuance) for use by participating voluntary organizations.

(e) Any decision of a local Federal Coordinating Committee that is appealed to the Director by any charitable agency or charitable federated group shall be given due weight by the Director. Any such appeal shall be looked upon with disfavor unless it raises a substantial question of fairness, construction of these regulations, or application of the policies, procedures, directives, and guidance of the Director. Unless the Director orders otherwise, all burdens of proof, of persuasion, and of going forward shall be borne by the appellant. An appeal may be dismissed as untimely unless it is received by the Director within the ten (10) days next following after the appellant has received actual or constructive notice of the decision from which the appeal is taken. Every appeal shall be submitted in writing; shall set forth a concise statement of the decision from which the appeal is taken, the grounds for the appeal, and the relief sought by the appellant; and shall be accompanied by written proof that copies thereof have been served upon the local Federal Coordinating Committee and any other proper party in interest whose participation in the appeal may be appropriate for the just disposition thereof. Except in extraordinary circumstances, the Director shall not consider any evidence or argument that was not first presented to the local Federal Coordinating Committee. The local Federal Coordinating Committee and any other proper party in interest may respond to the appeal. Every response, to be timely, shall be received by the Director within the five (5) days next following after the respondent has received actual or constructive notice of the appeal. Every response shall be submitted in writing; shall set forth a concise statement of the facts and arguments that the respondent believes are material; and shall be accompanied by written proof that copies thereof have been served upon the appellant and any other proper party in interest. The Director may, for good cause, extend or shorten the time limits herein set forth and waive requirements for written submissions and proofs of service. The Director may, in his sole discretion, and on his own motion, review any decision of a local Federal Coordinating Committee and stay any decision of a local Federal Coordinating Committee pending his review thereof. All decisions of the Director shall be final, and shall be executed forthwith by the local Federal Coordinating Committee or by such other person or entity as the Director may direct to do so, in the manner and within the time directed by the Director.

PART 960—FEDERAL EXECUTIVE BOARDS

Sec.
960.101 Definitions.
960.102 Authority and status.
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AUTHORITY: Memorandum of the President for Heads of Departments and Agencies (November 10, 1961).

SOURCE: 49 FR 34194, Aug. 29, 1984, unless otherwise noted.

§ 960.101 Definitions.

For purposes of this part:

(a) The term "Director" means the Director of the United States Office of Personnel Management.

(b) The term "Executive agency" means a department, agency, or independent establishment in the Executive Branch.

(c) The term "metropolitan area" means a geographic zone surrounding a major city, as defined and delimited from time to time by the Director.

(d) The term "principal area officer" means, with respect to an Executive agency, the senior official of the Executive agency who is located in a metropolitan area and who has no superior official within that metropolitan area other than in the Regional Office of the Executive agency. Where an Executive agency maintains facilities of more than one bureau or other subdivision within the metropolitan area, and where the heads of those facilities are in separate chains of command within the Executive agency, then the Executive agency may have more than one principal area officer.

(e) The term "principal regional officer" means, with respect to an Executive agency, the senior official in a Regional Office of the Executive agency.

(f) The term "special representative" means, with respect to an Executive agency, an official who is not subject to the supervision of a principal regional officer or a principal area officer and who is specifically designated by the head of the Executive agency to serve as the personal representative of the head of the Executive agency.

§ 960.102 Authority and status.

Federal Executive Boards are established by direction of the President in order to strengthen the management and administration of Executive Branch activities in selected centers of field operations. Federal Executive Boards are organized and function under the authority of the Director.

§ 960.103 Location.

Federal Executive Boards have been established and shall continue in the following metropolitan areas: Albuquerque-Santa Fe, Atlanta, Baltimore, Boston, Buffalo, Chicago, Cincinnati, Cleveland, Dallas-Fort Worth, Denver, Detroit, Honolulu, Houston, Kansas City, Los Angeles, Miami, Minneapolis-St. Paul, New Orleans, New York, Newark, Philadelphia, Pittsburgh, Portland, St. Louis, San Francisco, and Seattle. The Director may, from time to time, dissolve, merge, or divide any of the foregoing Federal Executive Boards, or establish new Federal Executive Boards, as he may deem necessary, proper or convenient.

§ 960.104 Membership.

(a) *Presidential Directive.* The President has directed the heads of agencies to arrange for the leading officials of their respective agencies' field activities to participate personally in the work of Federal Executive Boards.

(b) *Members.* The head of every Executive agency shall designate, by title of office, the principal regional officer, if any, and the principal area officer or officers, if any, who shall represent the agency on each Federal Executive Board; and by name and title of office, the special representative, if any, who shall represent the head of the agency on each Federal Executive Board. Such designations shall be made in writing and transmitted to the Director, and may be transmitted through the Chairmen of the Federal Executive Boards. Designations may be amended at any time by the head of the Executive agency.

(c) *Alternate Members.* Each member of a Federal Executive Board may designate an alternate member, who shall attend meetings and otherwise serve in the absence of the member. An alternate member shall be the deputy or principal assistant to the member or another senior official of the member's organization.

§ 960.105 Officers and organization.

(a) *By-Laws.* A Federal Executive Board shall adopt by-laws or other rules for its internal governance, subject to the approval of the Director. Such by-laws and other rules may reflect the particular needs, resources, and customs of each Federal Executive Board, provided that they are not inconsistent with the provisions of this part or with the directives of the President or the Director. To the extent that such by-laws and other rules conflict with these provisions or the directives of the President or the Director, such by-laws and other rules shall be null and void.

(b) *Chairman.* Each Federal Executive Board shall have a Chairman, who shall be elected by the members from among their number, and who shall serve for a term of office not to exceed one year.

(c) *Staff.* As they deem necessary and proper, members shall, from time to time, designate personnel from their respective organizations to serve as the staff, or otherwise to participate in the activities, of the Federal Executive Board. Other personnel may be engaged, by appointment, contract, or otherwise, only with the approval of the Director.

(d) Unless otherwise expressly provided by law, by directive of the President or the Director, or by the by-laws of the Federal Executive Board, every committee, subcommittee council, and other sub-unit of the Federal Executive Board, and every affiliation of the Federal Executive Board with external organizations, shall expire upon expiration of the term of office of the Chairman. Such a committee, subcommittee, council, other sub-unit, or affiliation may be reestablished or renewed by affirmative action of the Federal Executive Board.

(e) *Board Actions.* Actions of a Federal Executive Board shall be taken only with the approval of a majority of the members thereof. This authority may not be delegated. All activities of a Federal Executive Board shall conform to applicable laws and shall reflect prudent uses of official time and funds.

§ 960.106 OPM leadership.

(a) *Role of the Director.* The Director is responsible to the President for the organizational and programmatic activities of the Federal Executive Boards. The Director shall direct and oversee the operations of Federal Executive Boards consistent with law and with the directives of the President. He may, from time to time, consult with, and require the advice of, the Chairman, members, and staff of the Federal Executive Boards.

(b) *Role of the Director's Regional Representatives.* The Chairman of each Federal Executive Board shall report to the Director through the Director's Regional Representative, an official of the Office of Personnel Management. The Director's Regional Representatives shall oversee the activities of, and periodically visit and meet with, the Federal Executive Boards.

(c) *Communications.* The Office of Personnel Management shall maintain channels of communication from the Director through the Director's Regional Representatives to the Chairmen of the Federal Executive Boards, and between and among the Federal Executive Boards through the Director and the Director's Regional Representatives. Any Executive agency may use these channels to communicate with the Director and with the Federal Executive Boards. Chairmen of Federal Executive Boards may communicate with the Director on recommendations for action at the national level, on significant management problems that cannot be addressed at the local level, and on other matters of interest to the Executive Branch.

(d) *Reports.* Each Federal Executive Board shall transmit to the Director, over the signature of its Chairman, an annual work plan and an annual report to the Director on the significant programs and activities of the Federal Executive Board in each fiscal year. Each work plan shall set forth the proposed general agenda for the succeeding fiscal year. The work plan shall be subject to the approval of the Director. Each annual report shall describe and evaluate the preceding fiscal year's activities. The work plan for Fiscal Year 1985 shall be submitted on or before July 1, 1984, and the annual report for Fiscal Year 1984 shall be submitted on or before January 1, 1985. Subsequent annual reports shall be submitted on or before January 1 and subsequent annual work plans shall be submitted on or before July 1 in every year thereafter. In addition, members of Federal Executive Boards shall keep the headquarters of their respective Executive agencies informed of their activities by timely reports through appropriate agency channels.

(e) *Conferences.* The Director may, from time to time, convene regional and national conferences of Chairmen and other representatives of Federal Executive Boards.

§ 960.107 Authorized activities.

(a) Each Federal Executive Board shall serve as an instrument of outreach for the national headquarters of the Executive Branch to Executive Branch activities in the metropolitan area. Each Federal Executive Board shall consider common management and program problems and develop cooperative arrangements that will promote the general objectives of the Government and of the several Executive agencies in the metropolitan area. Efforts of members, alternates, and staff in those areas shall be made with the guidance and approval of the Director; within the range of the delegated authority and discretion they hold; within the resources available; and consistent with the missions of the Executive agencies involved.

(b) Each Federal Executive Board shall: (1) Provide a forum for the exchange of information between Washington and the field and among field elements in the metropolitan area about programs and management methods and problems; (2) develop local coordinated approaches to the development and operation of programs that have common characteristics; (3) communicate management initiatives and other concerns from Washington to the field to achieve better mutual understanding and support; and (4) refer problems that cannot be solved locally to the national level.

(c) Subject to the guidance of the Director, the Federal Executive Boards shall be responsible for:

(1) Presidential initiatives on management reforms; personnel initiatives of the Office of Personnel Management; programs led by the Office of Management and Budget, such as Reform '88 and the President's Council on Integrity and Efficiency; and facilities planning led by the General Services Administration;

(2) The local Combined Federal Campaign, under the direction of the Director;

(3) The sharing of tecnical knowledge and resources in finance, internal auditing, personnel management, automated data processing applications, interagency use of computer installations, and similar commonly beneficial activities;

(4) The pooling of resources to provide, as efficiently as possible, and at the least possible cost to the taxpayers, common services such as employee first-aid, cardiopulmonary resuscitation ("CPR"), CPR training, preventative health programs, assistance to the aging, blood donor programs, and savings bond drives;

(5) Encouragement of employee initiative and better performance through special recognition and other incentive programs, and provision of assistance in the implementation and upgrading of performance management systems;

(6) Emergency operations, such as under hazardous weather conditions; responding to blood donation needs; and communicating related leave policies;

(7) Recognition of the service of American Veterans and dissemination of information relating to programs and benefits available for veterans in the Federal service; and

(8) Such other programs, projects, and operations as may be set forth in the annual work plan approved by the Director.

(d) The Office of Personnel Management shall advise Federal Executive Boards on activities in the areas of performance appraisal and incentives, interagency training programs, the educational development of Government employees, improvement of labor-management relations, equal employment opportunity, the Federal Women's Program, the Federal Equal Opportunity Recruitment Program, the Hispanic Employment Program, the Veterans Employment Program, and selective placement programs for handicapped individuals.

(e) The Director may, from time to time, direct one or more of the Federal Executive Boards to address such specific programs or undertake such cooperative activities as he may deem necessary or proper.

§ 960.108 Additional rules and directives.

The Director may, from time to time, issue further rules and guidance for, and directives to, the Federal Executive Boards through the Federal Personnel Manual System and other appropriate instruments.

PART 990—GENERAL AND MISCELLANEOUS

Subpart A—Claims and Appeals of Veterans; Recognition of Representatives

Sec.

990.101 Appearance.
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990.106 General provisions.

AUTHORITY: 5 U.S.C. 1302, 3315, 7512, 7701.

SOURCE: 33 FR 12523, Sept. 4, 1968, unless otherwise noted.

Subpart A—Claims and Appeals of Veterans; Recognition of Representatives

§ 990.101 Appearance.

A preference eligible who has filed with OPM a claim or an appeal under section 3502, 3503, or 7701 of title 5, United States Code, may appear in a proceeding in connection therewith either personally or by a representative. The representative may be a person designated by the preference eligible, that person being referred to in this part as agent; or a service organization designated by the preference eligible and approved by OPM.

§ 990.102 Agents.

A competent person of good moral character and of good repute who is a citizen of the United States, or who has declared his intention to become a citizen of the United States, may be designated as an agent. A person (other than a Member of Congress) claiming to act as an agent shall submit a written statement from the preference eligible (OPM Form 307) authorizing him to represent the preference eligible in his claim or appeal. A written statement is not required of a Member of Congress claiming to act as an agent to represent a preference eligible in his claim or appeal.

§ 990.103 Recognition of service organizations.

A service organization approved by OPM may be recognized in the presentation of claims or appeals under section 3502, 3503, or 7701 of title 5, United States Code, when the proper officers thereof make application for recognition, and as a part of the application agree and certify that neither the organization nor its representatives will charge claimants or appellants a fee or compensation for their services, except expenses actually incurred with the consent of the claimant. In requesting recognition, the following information shall be supplied:

(a) Statement outlining the purpose of the organization and need thereof, and manner in which the preference eligible will be benefited by the recognition.

(b) Names, titles, and addresses of officers.

(c) Number of posts or chapters, and States in which located.

(d) Names, titles, and addresses of full-time paid employees who are qualified to act as accredited representatives.

(e) Copy of constitution or charter and bylaws of the organization.

§ 990.104 Accredited representatives of service organizations.

(a) Each recognized service organization shall file with OPM, on the prescribed form (OPM Form 306), the name of any officer whom it desires to be recognized as its accredited representative and OPM office or offices to which recognition is to be extended in the presentation of claims or appeals. In proposing a candidate for recognition as a representative, the organization, through its appropriate officer, shall certify to the following:

(1) That the candidate is a citizen of the United States, of good character and reputation, is qualified by training or experience to assist in the presentation of claims, and is a member or employee of the organization.

(2) That he is not employed in any civil or military department or agency of the United States, and is not a retired member of the Regular Army, Navy, Air Force, Marine Corps, Coast Guard, or Public Health Service.

(3) Whether the candidate is a preference eligible and, if so, that he was honorably discharged from active service.

(b) A single application (OPM Form 306) shall be filed with the central office of OPM for recognition before (1) the central office only, (2) two or more regional offices, or (3) the central office and one or more regional offices. Application shall be filed with the regional office where the candidate is to serve when recognition before only one regional office is requested. Application Form 306 shall be retained by the approving office of OPM.

(c) The central office or regional director, as the case may be, is responsible for determining the qualifications of a candidate of a service organization for recognition. Normally, the candidate of a service organization will be approved. However, if there is doubt as to the qualifications or suitability of a candidate, appropriate investigation may be made to resolve the doubts. If it is determined that the candidate is qualified, duplicate copies of a letter of notice to that effect shall be issued to the veterans organization concerned, with an Identification Card (OPM Form 308) in the candidate's name signed by the appropriate official in the central office or the regional director. One copy of the letter of approval shall be retained by the organization and the other forwarded to the candidate with the Identification Card 308 countersigned by the appropriate officer of the organization. When approval is made by the central office, a copy of the letter of approval shall be sent to each regional office before which recognition of the candidate is approved. When approval is made by a regional office, a copy of the letter of approval shall be sent to the central office of OPM. Each regional office shall maintain a record of all accredited representatives approved for recognition before that regional office. The central office shall maintain a record of all accredited representatives approved by all regional directors and the central office. If the regional director's determination is adverse, or the case is one of doubtful aspect, the entire matter may be referred to OPM's central office, at the regional director's option, where it will be handled in the same manner as a request for recognition ordinarily handled by the central office.

(d) Recognition may be canceled at the request of the organization. The central office or regional director may cancel or suspend a recognition for cause. When a regional director cancels or suspends a recognition, a report of the facts shall be made to the central office. Notice of cancellation or suspension shall be supplied in the same manner as a notice of recognition.

(e) Nominations for accredited representatives of national service organizations are acceptable only if approved by the certifying officer, national headquarters, of the organization.

(f) Letters of recognition issued by the central office to national and field officers of recognized organizations constitute authorization for their recognition in claims or appeals in any regional office within their respective assignments. Letters of recognition issued by a regional director constitute authorization for the accredited representatives to present claims or appeals in any regional office within their respective assignments.

(g) When a representative has been recognized, a card shall be prepared in the office which approves the recognition, showing his name, address, organization, and date of recognition. Copies of this card shall be filed in the central office of OPM, and in the regional office by which he is recognized or in which he is authorized to act.

§ 990.105 Designation of service organizations as representatives.

(a) Before a service organization may be recognized in an individual claim or appeal, there shall be filed a designation duly executed by the claimant or appellant, specifically conferring on the organization the authority to represent him in the presentation of his claim or appeal, and to receive information in connection therewith. This designation shall be on the form prescribed by OPM (OPM Form 307) and shall be presented to the office concerned, to be filed in connection with the claim or appeal. The designation shall be signed by the claimant or appellant.

(b) On receipt and approval of the designation, the service organization named therein shall be recognized as the sole agency for the presentation of the claim or appeal covered thereby, and no other organization shall be recognized in the presentation of that claim or appeal. The designation made by the claimant may be revoked by him at any time and a subsequent designation made, naming another organization. A subsequently executed designation constitutes a revocation of any existing designation. A designation may also be revoked by the organization named therein.

§ 990.106 General provisions.

(a) Nothing in this subpart permits the unauthorized practice of law in any place or the giving of any service except the authorized participation in agency proceedings by agents or accredited representatives who have been approved by OPM.

(b) This subpart does not apply to adjudications of charges of political activity on the part of officers or employees in the competitive service, or of officers or employees of a State or local government, nor to adjudications of the existence of good cause for the removal of hearing examiners appointed under section 3105 of title 5 United States Code.

SUBCHAPTER C—REGULATIONS GOVERNING EMPLOYEES OF THE OFFICE OF PERSONNEL MANAGEMENT

PART 1001—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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AUTHORITY: E.O. 11222, 30 FR 6469, 3 CFR 1964-65 Comp. p. 306; 5 CFR 735.101 et seq., unless otherwise noted.

SOURCE: 36 FR 6874, Apr. 9, 1971, unless otherwise noted.

Subpart A—General

§ 1001.735-101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by employees and special Government employees is essential to assure the proper performance of OPM's business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth OPM's regulations prescribing standards of conduct and responsibilities and governing statements of employment and financial interests for employees and special Government employees.

§ 1001.735-102 Definitions.

In this part:

(a) "Employee" means an officer and an employee of the Office of Personnel Management, but does not include a special Government employee.

(b) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(c) "Special Government employee" means a special Government employee as defined in section 202 of title 18 of the United States Code who is employed by OPM.

§ 1001.735-103 Remedial action.

(a) A violation of this part by an employee or special Government employee may be cause for remedial action. Remedial action may include, but is not limited to:

(1) Changes in assigned duties:

(2) Divestment by the employee or special Government employee of his conflicting interest;

(3) Disciplinary action which may be in addition to any penalty prescribed by law; or

(4) Disqualification for a particular assignment.

(b) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

Subpart B—Conduct and Responsibilities of Employees

§ 1001.735-201 Proscribed actions.

An employee shall avoid any action which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1001.735-202 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with OPM;

(2) Conducts operations or activities that are regulated by OPM; or

(3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

(b) The restrictions set forth in paragraph (a) of this section do not apply to:

(1) Obvious family or personal relationships, such as those between the employee and his parents, children, or spouse, when the circumstances make it clear that those relationships rather than the business of the persons concerned are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or an inspection tour where an employee may be properly in attendance;

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 1001.735-203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under OPM orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

(f) A gift or gratuity, the receipt of which is prohibited by this section shall be returned to the donor with a written explanation why the return is necessary. A copy of the written explanation shall be submitted to OPM's counselor on employee ethics and conduct or a deputy counselor (see OPM PM Chapter 735, section 1-2b) for filing in the employee's Official Personnel Folder. When the return of the gift is not possible, the gift or gratuity shall be submitted to one of the above mentioned officials with a written explanation why the return is not feasible. The counselor or deputy counselor shall turn the gift or gratuity over to a public or private charity or charitable organization.

[36 FR 6874, Apr. 9, 1971; 36 FR 7735, Apr. 24, 1971]

§ 1001.735-203 Outside employment and activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances wherein acceptance may result in, or create the appearance of, a conflict of interest;

(2) Outside employment or activity which tends to impair his mental or physical capacity to perform the duties and responsibilities of his position in an acceptable manner;

(3) Outside employment or activity which may bring criticism of, or cause embarrassment to, OPM; or

(4) Outside employment or activity which is in violation of a statute, Executive order, or regulation, including applicable State and local statutes and ordinances.

(b) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, this part, or the agency regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of OPM or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(c) Employees are encouraged to serve as members of committees or boards which plan or advise on training courses or programs offered by non-Government organizations, especially when the courses or programs are designed for, or are of particular interest to, Federal employees. However, before an employee may accept membership on such a committee or board, he shall request in writing and secure the approval of OPM official authorized to grant the request. Associate directors, regional directors, and heads of staff offices are authorized to grant requests made by their employees. The Director and the Deputy Director are the approving authorities for employees who report directly to them. The authorizing official shall transmit a copy of each approved request for inclusion in the employee's Official Personnel Folder.

(d) Employees are encouraged to accept appointments as faculty members for after-hours teaching. However, before an employee may accept such an appointment, he shall request and secure approval, and the approved request shall be included in his Official Personnel Folder, as provided in paragraph (c) of this section.

(e) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government.

(f) An employee who engages in any kind of outside paid employment on a substantially regular basis shall submit to his immediate supervisor a memorandum describing the employment and stating approximately how many hours per week he is so employed. The immediate supervisor shall forward the memorandum through his bureau director, regional director, or staff office head for inclusion in the employee's Official Personnel Folder.

(g) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law;

(2) Participation in the local self-government activities in the community in which he resides to the extent permitted by law. However, an employee may not hold elective office in his local community government without the approval of the Deputy Director; or

(3) Participation in the affairs of, or acceptance of an award for meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(Pub. L. 95-454; Reorganization Plan No. 2 of 1978)

[36 FR 6874, Apr. 9, 1971, as amended at 44 FR 76747, Dec. 28, 1979]

§ 1001.735–204 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order 11222, Part 735 of this chapter, or this part.

§ 1001.735–205 Misuse of information.

(a) Except as provided in § 1001.735–203(b), an applicant or employee shall not, directly or indirectly, for the purpose of furthering a private interest, use or allow the use of official information which has not been made available to the general public and which has been obtained by such employee through, or in connection with, Government employment or application for Government employment.

(b) Nothing in this section shall permit the use of personnel actions against applicants or employees in reprisal for lawful disclosures of information made by such applicants or employees, to proper authorities, on the reasonable belief that the information thus disclosed evidences a violation of law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

[49 FR 1332, Jan. 11, 1984]

§ 1001.735–205a Employment referrals.

Unless requested by an agency, or specifically part of his or her official duties, no officer or employee of the Office of Personnel Management shall make or transmit to a Federal agency any written or oral referral or recommendation in behalf of, or against, an applicant for Federal employment. Further, unless requested by an agency, or specifically part of his or her official duties, no officer or employee of OPM shall make or transmit to a Federal agency any written or oral recommendation bearing on agency action in the promotion, assignment, transfer, or retention of an agency employee. This standard of conduct does not preclude inquiry by an OPM officer or employee into any aspect of a personnel action proposed or taken in behalf of, or against, an agency employee as part of his or her officially assigned duties or when the OPM officer or employee has reason to believe that the action was or may be in violation of the laws, rules or regulations administered by OPM.

[40 FR 5347, Feb. 5, 1975]

§ 1001.735-206 Safeguarding the examination process.

(a) An employee shall notify his supervisor when he intends to file for a competitive examination or an internal, noncompetitive examination. He must give similar notice if he knows that a close relative, a member of his household, or a roommate intends to take a competitive examination.

(b) If the employee takes part in the construction of written tests, has access to test material or is involved in the examination rating process, his supervisor or other appropriate authority will arrange his duty assignments to prevent his contact with materials related to the examination or examinations applied for. If the test material involved in the forthcoming examination has already been exposed to the employee, arrangement will be made for the person concerned to be given an alternate test.

(c) The supervisor is responsible to see that notifications given by employees are transmitted promptly. In the central office, supervisors will forward this information to the Test Security Officer in the Staffing Services Group. In the regions, supervisors will give the information to Regional Directors.

§ 1001.735-207 Support of OPM programs.

(a) When an OPM program is based on law or Executive order, every employee has a positive obligation to make it function as efficiently and economically as possible and to support it as long as it is a part of recognized public policy. An employee may, therefore, properly make an address explaining and interpreting such a program, citing its achievements, defending it against uninformed or unjust criticism, pointing out the need for possible improvements, or soliciting views for improving it.

(b) An employee shall not, either directly or indirectly, use appropriated funds to influence a Member of Congress to favor or oppose legislation in violation of 18 U.S.C. 1913. However, an employee is not prohibited from:

(1) Testifying as a representative of OPM on pending legislation proposals before congressional committees on request; or

(2) Assisting congressional committees in drafting bills or reports on request, when it is clear that the employee is serving solely as a technical expert under the direction of committee leadership.

§ 1001.735-208 Contracts between OPM and Government employees or former OPM employees.

(a) Contracts shall not knowingly be entered into between OPM and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

(b) Contracts shall not be entered into between OPM and former full-time, non-temporary OPM employees during the one year period following their termination from OPM employment, except where the participation of the former OPM employee is essential to obtaining the needed services.

(c) Exceptions under paragraphs (a) and (b) of this section shall be approved by the Associate Director, Administration Group, or his designee.

[49 FR 1332, Jan. 11, 1984]

§ 1001.735-209 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property including equipment, supplies, and other property entrusted or issued to him.

§ 1001.735–210 Indebtedness.

(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court.

(b) When an employee has a levy placed against his salary for failure to pay an indebtedness for Federal income taxes, he shall be issued a written reprimand stating that failure to make satisfactory arrangements regarding future tax liabilities will be grounds for removal.

(c) When an employee is the subject of a letter of complaint stating that he has not paid his State or local taxes and has failed to make satisfactory arrangements regarding the debt, he shall be interviewed by the Director of Personnel in the central office or by the regional director in a regional office. In this interview he shall be instructed to make satisfactory arrangements for the payment of his debt immediately and informed that failure to do so will be grounds for removal.

(d) When an employee is the subject of a letter of complaint regarding any other kind of indebtedness to a unit of government, Federal, State, or local, the procedure prescribed in paragraph (c) of this section shall be observed.

(e) When a creditor who holds a legal judgment against an employee requests that OPM assist in collecting the debt, the employee shall be interviewed by the Director of Personnel or the regional director, as appropriate. In this interview he shall be instructed to pay the debt in full within 90 days, or within whatever longer period is specified by the Director of Personnel or regional director if he determines that a 90-day time limit would impose undue hardship on the employee, and informed that failure to do so will be grounds for removal.

(f) When an employee is the subject of a letter of complaint from a creditor who does not hold a legal judgment against the employee, the Director of Personnel or regional director shall forward a copy of the letter to the employee together with a memorandum calling the employee's attention to the provisions of this section. However, OPM will not assist the creditor in collecting the debt.

§ 1001.735–211 Gambling, betting, and lotteries.

An employee shall not participate, whole on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device; in conducting a lottery or pool; in a game for money or property; or in selling or purchasing a numbers slip or ticket.

§ 1001.735–212 Coercion.

An employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 1001.735–213 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 1001.735–214 Miscellaneous statutory provisions.

The attention of each employee is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72A Stat. B12, the Code of Ethics for Government Service.

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (E.O. 10450, U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against:

(1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and

(2) The disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against:

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The provision relating to the denial of the right to petition Congress (5 U.S.C. 7102).

(r) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(s) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

(t) The prohibition against the employment of an individual convicted of felonious rioting or related offenses (5 U.S.C. 7313).

(u) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees in GS-16 or above, or a comparable pay level) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of pay, a loan, or reimbursement for travel or other expenses from, or his sale to or purchase of property from a private foundation.

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 1001.735-301 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he had family, business, or financial ties.

§ 1001.735-302 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) A special Government employee may engage in teaching, lecturing, and writing to the same extent, and subject to the same restrictions, as provided in § 1001.735-203(b) for employees.

§ 1001.735-303 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with OPM anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) The restrictions set forth in paragraph (a) of this section do not apply to:

(1) Obvious family or personal relationships, such as those between the special Government employee and his parents, children, or spouse, when the circumstances make it clear that those relationships rather than the business of the persons concerned are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of special Government employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) A gift or gratuity, the receipt of which is prohibited by this section shall be returned to the donor with a written explanation why the return is necessary. A copy of the written explanation shall be submitted to OPM's counselor on employee ethics and conduct or a deputy counselor (see OPM PM Chapter 735, section 1–2b) for filing in the employee's Official Personnel Folder. When the return of the gift is not possible, the gift or gratuity shall be submitted to one of the above mentioned officials with a written explanation why the return is not feasible. The counselor or deputy counselor shall turn the gift or gratuity over to a public or private charity or charitable organization.

§ 1001.735–304 Applicability of other provisions.

Except for § 1001.735–208, the provisions of §§ 1001.735–206 through 1001.735–213 apply to special Government employees in the same manner as to employees.

[49 FR 1332, Jan. 11, 1984]

Subpart D—Statements of Employment and Financial Interests

§ 1001.735–401 Employees required to submit statements:

Employees shall submit statements of employment and financial interests in accordance with the criteria established in 5 CFR 735.403. An employee required to file a financial statement under the provisions of the "Ethics in Government Act of 1978" (Public Law 96–521) shall not file a statement under this subpart.

[49 FR 1332, Jan. 11, 1984]

§ 1001.735–402 Employee's complaint on filing requirement.

An employee who believes that his or her position has been improperly included as one requiring submission of a statement of employment and financial interests may obtain a review of that designation through the OPM internal grievance procedure.

[49 FR 1332, Jan. 11, 1984]

§ 1001.735–403 Form of statements.

An employee required to submit a statement of employment and financial interests should submit that statement in the format prescribed by the Office of Personnel and EEO.

[49 FR 1333, Jan. 11, 1984]

§ 1001.735–404 Time for submission of statements.

An employee required to submit a statement of employment and financial interests by § 1001.735–401 shall submit that statement no later than 30 days after the date of entrance on duty in the position covered by § 1001.735–401.

§ 1001.735–405 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement, in the format prescribed by the Office of

Personnel of OPM, as of September 30 of each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of section 208 of title 18, United States Code, or Subpart B of this part.

[49 FR 1333, Jan. 11, 1984]

§ 1001.735–406 Interests of employees' relatives.

The interests of a spouse, minor child, or other member of an employee's immediate household are considered to be interests of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

§ 1001.735–407 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or on a supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf.

§ 1001.735–408 Information not required.

An employee is not required to submit on a statement of employment and financial interests, or on a supplementary statement, any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

[36 FR 6874, Apr. 9, 1971, as amended at 40 FR 48339, Oct. 15, 1975]

§ 1001.735–409 Review of statements.

(a) All statements of employment and financial interest shall be submitted to the staff office, program office or regional office where the position is located. The head of the office, regional director or delegee, shall review all statements for potential conflicts of interest before forwarding them to the Office of the General Counsel where the statements will be maintained.

(b) When a statement submitted under this section indicates a conflict between the interests of an employee and the performance of services for the Government, and when the conflict or appearance of conflict cannot be resolved by the reviewing official, the information concerning the conflict shall be reported to the General Counsel of OPM. The employee concerned shall be given an opportunity to explain the conflict or appearance of conflict before remedial action is initiated.

[36 FR 6874, Apr. 9, 1971, as amended at 45 FR 83473, Dec. 19, 1980; 49 FR 1333, Jan. 11, 1984]

§ 1001.735–410 Confidentiality of statements.

Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence and retained in limited access files of the reviewing official. The use of information on the statements shall be limited to that necessary to carry out the purposes of this part. Information from a statement or a supplementary statement shall not be disclosed except by decision of the Director of OPM.

§ 1001.735–411 Effect of statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for or in derogation of any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which he or the other person's participation is prohibited by law, order, or regulation.

§ 1001.735-412 Submission of statements by special Government employees.

(a) Each special Government employee shall submit a statement of employment and financial interests not later than the time of his employment. Each special Government employee shall keep his statement current throughout his period of employment by the submission of supplementary statements.

(b) A special Government employee shall submit his statement of employment and financial interests in the format prescribed by the Office of Personnel and EEO of OPM. The statement shall be filed with the Assistant Director of OPM for Personnel, who shall review it for potential conflicts of interest before forwarding it to the Office of the General Counsel, where all such statements will be maintained. All such statements shall be accorded the confidentiality prescribed in § 1001.735-410.

(c) The provisions of §§ 1001.735-406 through 1001.735-411 apply to special Government employees in the same manner as to employees.

(d) The Director of OPM may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when he finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purposes of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

[36 FR 6874, Apr. 9, 1971, as amended at 49 FR 1333, Jan. 11, 1984]

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(a)(41) revised........33757
(a)(1) removed........34103
213.3306 (a)(46) added........1635
(a)(47) added........5621
(a)(48) added........5995
(a)(49) added........6879
(a)(23) revised........8164
(a)(50) and (51) added........10076
(a)(2) and (10) revised; (a)(9) removed; (a)(52) added........11337
(a)(53) added........12404
(a)(7) and (34) removed........13009
(a)(1) and (13) revised........13633
(a)(46), (48), (52), and (53) and (e)(2) removed; (c)(2) revised........21621
(a)(46), (48), (52) and (53) correctly reinstated........27211
(a)(54) added........28811
(a)(55) added........29797
(a)(56) and (57) added........31409
(a)(2) and (4) revised; (a)(43), (44), (50), and (51) removed....34103
213.3308 (a)(1), (3), (4), (5), (6), (7), and (11) removed........21621
(a)(9) revised........32123
(a)(9) revised; (a)(10) removed...34103
213.3309 (a)(5) and (6) removed; (a)(7) revised........21621
213.3310 (v) added........5621
(p)(1) and (5) removed........11059
(a)(4) revised........14173
(q)(3) added........15499
(a)(2), (3), and (7), (e)(4), and (r)(4) removed; (a)(4), (d)(1), and (s)(4) revised........21621
(a)(8) added........22465
(r)(5) revised........22535
(w) added........28553
(s)(5) added........30531
(s) (6) and (7) added........32781
(e)(2), (q)(3), and (r)(3) removed........34103
213.3312 (h)(3) revised........3037
(h)(4) added........5621
(a)(1) revised........17179
(a) (3), (5), (30), (31), and (34) through (39) revised........18541
(a)(1) effective date corrected....21170

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(a) (1), (2), and (3), (b)(2), and (h)(3) revised; (a) (11), (14), (19), (22), (25), (32), (35), and (38), (i)(3), (j), (m)(2), and (o) removed........21621
(a)(42) added........22535
(a)(43) added........23312
(a)(5) revised........26675
(h)(3) correctly reinstated........27211
(a)(10) removed; heading of (l) revised; (l)(12) added........27351
(a)(3) revised........30251
(h)(3) revised; (h)(5) added........32781
(a)(6) added........33487
(a)(3) revised; (a) (28), (36), (41), and (43) and (k)(2) removed........34103
213.3313 (a)(28) added........4313
(a)(10) revised........5621
(a)(20) added........6879
(c)(6) added........8049
(a) (29), (30), and (31) added........8448
(a)(32) added........9073
(a)(33) added........13475
(a)(9) revised........15717
(c)(6) revised........17827
(a)(34) added........18541
(t)(1) added........19111
(a)(9) and (b)(4) revised; (a) (29) and (30), (h)(7), (k)(5), (p)(2), and (r) removed........21621
(a)(35) added........21933
(a)(36) added........23312
(c)(7) added........26675
(t)(2) added........32251
(a)(31) and (c)(5) removed........33577
213.3314 (r)(3) added........2327
(a)(8) revised........6879
(d)(4) added........12801
(a)(14) removed........13009
(a)(26) added........13321
(a)(27), (d)(5), and (n)(3) added........13633
(d)(6) and (t) added........14172
(a)(28) added; (d)(2) revised........15717
(d)(1) removed........17179
(a)(29) added........18445
(f)(1) revised........20065
(a) (2) and (16), (j)(1), (m) (6) and (10), and (r)(1) revised; (a) (23) and (24), (d)(3), (j)(3), (l)(4), (m) (3), (5), (11), (12), (13), and (14), (n) (2) and (3), (q) (4), (5), and (6), (r)(2), and (s) removed........21622

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	38 FR Page
(m)(15) added	22535
(n)(3) added	24885
(a)(30) added; (m)(10) revised	29797
(a)(31) added	31505
(a)(4) and (m) (1) and (6) revised; (a) (13) and (28), (d) (4) and (6), (h), (j), (q)(3), and (r)(3) removed	34103
213.3315 (a)(30) added	7393
(a)(31) added	9219
(a) (8) and (29) revised; (a)(17) removed; (a)(32) added	11337
(a)(33) added	14367
(a)(22 revised	15717
(c) removed	16023
(a) (21) and (29) revised	18541
(a) (1) and (24) revised; (a) (12), (14), (20), (30), and (32), (e), and (i) removed	21622
(a) (8) and (22) revised; (a) (34) and (35) added	21776
(a)(22) revised	22535
(a)(36) added	24344
(i)(1) added	27351
(a) (8) and (29) revised	32781
(a)(5) added	33757
(a)(1) and (f)(2) revised; (a)(28) removed	34103
213.3316 (a)(27) added	4313
(a)(28) added	5621
(a)(6) revised	5995
(m) added	8049
(a)(23) removed	8233
(g)(2) added	11059
(h)(11) and (r) added	13475
(a) (29) and (30) added	14667
(r)(2) added	15499
(o)(3) revised	16023
(a)(26) removed	16329
(a) (2), (11), (13), (16), and (24), (c)(1), (n) (2), (5), (9), and (14), (p)(3), and (q)(7) revised; (a) (7), (12), (17), and (21), (c) (4), (7), (8), (10), and (11), (f) (4) and (11), (h) (3), (4), (9), and (10), (k) (7), (8), (9), and (12), (n) (8), (10), and (11), (o)(7), and (p) (2) and (4) removed	21622
(r)(3) added	23312
(a)(31) added; (f)(10) revised	24885
(a)(32) added	27351
(h)(8) revised	29875
(a)(25) revised; (f)(8) added	31409
(r)(4) added	32494

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	38 FR Page
(a) (16) and (27), (c)(3), (h)(1), (i)(1), (k) (2), (3), and (11), (n) (1), (5), and (14), (p)(3), and (q) (5) and (6) removed; (a)(18), (c)(1), (k)(4), (n)(2), and (q)(4) revised	34103
213.3317 (d) removed	21622
213.3318 (c)(3) removed	1269
(a)(9) removed	4313
(a) (3) and (4) revised	4499
(h)(2) added	9073
(i) added	18359
(f)(1) removed	21622
(c)(4) added	26443
(a)(1) revised; (a)(10) added; (h) removed	26675
(c)(5) added	27508
(a)(1) revised; (a)(41) added; (c)(1) removed	29797
(a)(3) revised	33577
(a)(2) and (c)(2) removed	34104
(a)(11) correctly designated from (a)(41)	34104
(a)(41) correctly designated as (a)(11)	34104
213.3320 (e) revised	17179
(d) removed	33577
(b) removed	34104
213.3322 (g) added	13726
(g) removed	21622
213.3326 Heading of (n) revised; (n)(2) added	19801
(a) (1) and (3) revised; (b) (2) and (3) and (d) removed	21622
(f)(1) removed	25907
(n)(1) correctly designated from (n)(2)	26353
(n)(2) correctly designated as (n)(1)	26353
(n) removed	32251
(o)(1) removed	32909
(p)(1) removed	33758
213.3327 (a) (6), (7), and (8) added	9485
(b)(2) added	16023
(a)(9) added	26675
213.3328 (b) added	4313
(i) added	6879
(f) removed	21623
(l) added	27508
213.3329 (a) and (f) revised; (b) removed	21623
(j) removed	33577
213.3330 (f) and (g) added	18541
213.3332 (a) revised	3187

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	38 FR Page
(u) added	9073
(v) added	14367
213.3337 (a)(9) removed	953
(a)(6) revised	5621
(a)(6) and (c)(2) revised; (a)(12) and (g)(2) removed	21623
(a)(13) added	22215
Heading of (a) corrected	26353
(c)(2) revised	26797
(a)(6) correctly reinstated	27211
(a)(14) added	27508
(b)(2) revised	28811
(a)(15) added	29209
(f) (2) and (3) revised	33577
213.3339 (c) added	15499
(d) and (e) added	32251
213.3341 (h) added	2327
(c) and (e) removed	21623
(d) revised	26797
213.3342 (d) removed	21623
(k) added	29875
(g) removed	34104
213.3344 (d) added	1269
(e) added	3037
(c) revised	8448
(e) removed	10076
213.3346 (f) added	10077
(c) removed	11059
(a) removed; (g) added	18359
(h) added	24885
213.3348 (e) and (f) removed; (p), (q), (r), (s), and (t) added	26353
213.3350 (c) revised	21623
213.3351 Removed	21623
213.3354 (j) added	7981
(c) revised; (d), (f), (g), and (i) removed	34104
213.3356 (e) added	27509
(f) added	31409
213.3359 (h) added	2959
(i) added	4313
(j) added	9583
(k) added	17179
(l) added	20065
(j) removed	21623
(a) revised	34104
213.3360 Added	19957
(b) and (c) added	23395
213.3364 (h) added	21776
(i) and (j) added	23395
213.3367 (a) revised	21623
213.3368 (e)(5) revised; (f) removed	1269
(e)(3) removed	33577
213.3371 Removed	8049
213.3373 (a)(7), (e)(13) and (g)(2) added	7216
(a)(19) revised; (e)(5) removed	21623
(a) (3), (6), and (19), (c)(2), (d)(8), (e) (4) and (7), and (g)(1) revised; (a) (4), (7), (8), (14), (16), (17), (18), (22), (30), and (31), (d) (1) and (7), (e)(3), and (h) removed	27816
(a)(19), (e)(4), and (g) removed	31505
213.3374 Removed	21623
213.3382 (c) revised	21623
(e) added	26443
213.3384 (a) (32), (33), and (34) added	5256
(a) (35) and (36) added	5995
(a)(35) revised	7981
(a)(37) revised; (a) (43) and (44) added; (a)(1) and (d)(9) removed	8448
(a) (38), (39), (40), (41), and (42) added	8588
(a)(7) revised; (a)(45) added	9073
(a) (10), (23), and (25) revised; (a)(46) and (47) added	9485
(a)(4) removed; (a)(48) and (49) added	11059
(a)(50) added	13633
(a) (46) and (47) and (c)(5) revised	14087
(a) (26) and (27) revised	16023
(a) (8) and (31) revised; (a)(51) added	16329
(f)(5) and (h)(1) added	17179
(a)(52) added	21170
(a) (3), (15), (18), (28), (38), (39), and (45) and (e)(1) removed; (a) (12) and (26) revised	21623
(c)(5) revised; (i) added	25165
(a)(43) removed; (a)(53) added	26181
(j) added	26675
Correctly designated as (i)(2)	28927
(a)(54) added	27509
(i)(2) correctly designated from (j)	28927
(b)(10) added	29875
(b)(6) added	33757
(f)(3) revised	33756
(a) (5), (7), (13), and (30), (b) (4) and (7), (d)(7), and (e)(6) removed; (a) (9), (26), (27), (31), and (42), (d) (3) and (10), and (e) (3) revised	34104
213.3394 (a)(31) added	4313

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(a)(32) added.....5995
(a)(21) revised; (a) (33) and (34) added.....6879
(a)(35) added.....7447
(a)(11) revised; (a)(36) added.....8164
(a)(37) added.....8588
(a)(1) removed.....9219
(a)(38) added.....9427
(b)(4) added.....9485
(a) (39) and (40) added.....9987
(a) (41) and (42) added.....10437
(a)(43) added.....20065
(a)(11) revised; (a) (25), (34), (35), (37), and (42), (b)(4), (e)(1), and (f)(1) removed.....21623
(a)(44) added.....21776
(a)(45) added.....23312
(a)(11) revised.....24885
(c)(7) added.....28811
(b)(4) and (i)(4) added.....29875
(b)(5) and (h)(2) added.....32781
(a)(11) revised; (a) (24), (27), and (31) removed.....33577
(a)(33) revised.....34104
(a)(46) added.....35473
213.3399 (a)(3) removed.....34104
316.201 Revised.....15617
335.103 Revised.....18445
Effective date.....26601
351.204 Added.....2696
351.205 Added.....2696
352.601—352.608 (Subpart F) added.....2327
352.605 (b) corrected.....3390
410.506 (c) revised.....28281
410.508 (a) revised.....28282
410.901 (b)(3)(i) revised; (d) added.....28282
430 Revised.....18445
Effective date.....26601
451.201 (a) revised.....18446
Effective date.....26601
451.301—451.308 (Subpart C) revised.....18446
Effective date.....26601
451.309 Revised.....22535
511.201 (b) amended.....11337, 22536
531.205 Revised.....27509
531.501—531.517 (Subpart E) revised.....14667
534.202 (b) amended.....11338, 22536
550 Subpart I Appendix A amended.....7115
550.361 Revised.....14261
591 Revised.....16850
591.202 Amended.....13726

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591.203 Amended.....13726
630.206 (a) revised.....18446
Effective date.....26601
630.506 Added.....18446
Effective date.....26601
715.202 (b) revised.....18446
Effective date.....26601
733.124 Amended.....7981
771.210 (a) revised; (i) added.....10247
(i) revised.....13009
771.302 (a) revised.....22960
772.305 (c) (3), (4), and (5) revised; (c)(6) added.....10247
831.109 Added.....15717
870.501 (d) revised.....12404
871.401 (c) revised.....12891
(c) Corrected.....13547
900.401—900.412 (Subpart D) added.....17920
900.501—900.510 (Subpart E) added.....11059
1001.735-401 Revised.....20817

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Chapter I
213 Revised.....44935
213.3102 (v) revised.....17096
(j) added.....35799
(q) revised.....41823
213.3103 (f) added.....961
(e)(2) added.....27143
Corrected.....27677
213.3104 (b)(1) removed.....27793
213.3105 (b)(9) added.....14937
(c) added.....40163
213.3106 (a)(6) added.....2079
(d)(1) revised.....17847
(b)(8) added.....23983
(a)(6) revised.....43195
213.3107 (g)(2) and (5) revised.....28607
213.3113 (d)(4) removed.....1349
(a)(4) removed.....41823
213.3114 (i)(3) revised.....5619
(d)(3) removed.....43811
213.3115 (a)(2) added.....9649
(d)(1) added.....37051
213.3127 (b) revised.....30337
213.3132 (a) revised.....36109
213.3135 (d) revised.....30337
213.3138 Removed.....20185
213.3182 (a)(18) removed.....1576
(b) (12), (19) and (22) revised.....5619

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(a)(5) added....20055
(a)(28) added....27794
(b) introductory text removed; (12), (19), and (24) revised....43811
213.3184 Removed....9649
213.3194 (f) added....33686
213.3199 (o) added....3809
(p) and (q) added....7569
(k) revised....9425
(r) added....21037
(n)(1) revised....26737
(r) removed....27143
213.3202 (a) revised....41823
213.3203 Added....41823
213.3206 (a)(2) revised....15383
(a) (1) and (3) removed; (a)(2) revised....42337
213.3273 Removed....41823
213.3303 (j)(2) removed; (k) added....1829
(a)(8) revised; (d)(1) removed....10233
(k)(2) added....13961
(j)(3) added....14937
(a)(2) revised; (k)(2) added....15383
(k)(2) (39 FR 15383) correctly designated as (k)(3)....16851
(i)(6) (38 FR 21621) correctly reinstated....20783
(k)(4) added....22247
(i)(6) added....24350
(k) (5) and (6) added....26030
(k) removed....29569
(a)(16) added....36109
(k) added....41823
(a)(2) revised; (d) (4) and (5), (j) (1), (3), (4) and (5), and (k) (13) and (14) removed....44401
213.3304 (a)(14) added....1270
(a)(2) revised; (a)(15) added....1425
(u)(2) added....8607
(h)(2) added....12091
(a)(16) added....14715
(a)(14) and (h)(1) removed....14937
(t)(1) and (z) added....15383
(a)(17) added....18629
(a)(18) added....20185
(a)(19) added....33686
(a)(2) revised; (a)(13) and (u)(1) removed....44401
(a) (14), (16) and (32) and (h)(6) removed; (a)(17), (f)(1), and (g)(1) revised....44402
213.3305 (a)(14) added....3927
(a)(50) added....4869
(a)(51) added....7569
(f)(2) revised....8607

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(a)(52) added....9535
(a) (35) and (49) removed....10233
(a)(53) added; (e) removed....16229
(a)(19) added....20185
(a)(47) revised....24351, 41824
(a) (41), (48) and (51) revised; (54) added....27794
(a)(19) revised....28607
(a)(53) revised....29569
(a)(4) revised....30105
(a)(13) revised; (a)(55) added....31287
(a)(35) revised....32603
(a)(56) added....31873
Revised....33687
(a)(20) added....39715
(a)(51) revised....40935
(a)(37) removed....44401
213.3306 (a) (53), (54), and (55) added....8607
(a)(1) revised....10233
(a)(3) revised....14937
(a)(56) added....15383
(a)(53) revised; (a) (53), (54), and (55) (39 FR 8607) correctly designated as (a) (58), (59), and (60)....16229
(a)(62) added....18629
(a)(63) added....19445
(a)(64) added....21037
(a)(65) added....23193
(a)(52) removed....31287
(a)(54) revised....33687
(e)(2) revised....35368
(a)(66) added....36319
(a)(2) revised....44401
213.3307 (b)(1) added....27444
(b) removed....44401
213.3309 (a)(1) revised....10115
(a)(9) added....22247
213.3310 (s)(8) added....2079
(a) (5) and (9) revised....5619
(s)(9) added....8607
(l) added....9649
(v)(2) removed....10233
(a)(5) revised....10419
(s)(10) added....20185, 21117
(b)(6) and (j) added....24351
(b)(7) added....26736
(e)(2) added....27444
(i)(2) added....28973
(a)(6) revised; (r) (2) removed....31287
(r)(7) added....35126
(b)(1), (k)(2) and (o)(1) revised; (s) (1) and (4) removed....44401
213.3312 (h) (3) and (5) revised....1575

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	39 FR Page
(a)(22) added	2079
(a)(13) added	7569
(a)(1) revised	8607
(a) (2) and (3) revised; (i)(4) removed	10233
(a)(15) added	10419
(a) (33) and (39) removed	14937
(h)(3) revised; (h)(6) added	26736
(a)(31) revised	27445
(a) (27) and (40) removed	31287
(a)(3) revised	37051
(a)(17) added	39715
(a) (1), (2) and (31) revised; (a) (29) removed	44401
(a)(18) revised	44402
213.3313 (t)(2) revised	1575
(a)(11) added	3809
(a)(5) revised	10419
(a) (27), (28), and (35) removed	14937
(a)(12) added	16229
(k)(3) removed	31287
(q)(1) revised	32603, 35125
(a)(6) removed; (b)(4) and (h)(4) revised	44401
213.3314 (q)(6) added	1349
(a)(10) added	1425
(a)(18) added	1576
(q)(8) added	1829
(a)(16) revised; (m) (8) and (9) removed; (m)(16) added	3809
(n)(3) and (q)(1) removed	10233
(b) and (h) added	10419
(m)(17) added	12333
(m)(6) removed	14937
(a)(15) added	23193
(d)(5) removed	31287
(m)(18) added	31874
(r)(2) added	33687
(m)(19) added	37051
(a)(16) revised; (a)(18) and (b) removed	44401
213.3315 (b)(2) removed	10233
(a)(3) revised; (a) (37), (38), and (39) added	11069
(a)(32) correctly reinstated	11523
(a)(32) revised	16229
(a)(22) revised; (a)(38) removed	31287
(a)(3) revised; (a)(39) removed	33687
(h)(1) revised	36109
(a)(27) revised	37051
(a) (5), (11) and (18) removed; (a)(6) revised	44401
213.3316 (a)(33) added	1349
(r)(4) revised	1575

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	39 FR Page
(q)(7) revised	2587
(c)(8) added	3927
(a)(2) revised	11069
(a)(11) revised	14714
(o)(10) added	17527
(q)(5) revised	18761
(n)(2) revised; (n)(4) added	19446
(o)(11) added	20185
(p)(3) added	20783
(f)(3) revised; (f)(12) added	27445
(r)(5) added	29569
(a)(29) revised	30105
(a)(10) removed	31287
(a)(28) removed	31874
(n)(13) added	31874
(r)(6) added	36109
(a) (4), (8), (9), and (24) removed; (a) (6), (13), and (15) revised	44401
(c) (5), (6), and (9), (k)(13), (l)(2), (n)(4), and (o)(10) removed; (c)(1) and (9)(1) revised	44401
213.3318 (i) revised	1425
(a)(1) revised	3927, 31287
(b)(5) removed	10233
(a)(4) revised; (a)(7) and (i)(1) removed	14937
(a)(13) removed	31287
213.3319 Added	8607
213.3320 (c) revised	17527
213.3322 (f) revised	1575
213.3326 (o) removed	1575
213.3327 (a) (6) and (7) revised	2587
(a) (1) and (7) revised; (a)(8) removed; (a)(10) added	12091
213.3329 (a) revised	2079
(f) revised	10233
(c) added	10419
213.3330 (e) revised	19446
213.3332 (p) added	8903
(r) added	26737
(d) revised	28607
213.3337 (a)(16) added; (c)(2) revised	2587
(b)(2) and (f)(2) revised	3809
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[1] See 41 FR 3073, Jan. 21, 1976.

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(a)(30) and (31) revised	49969
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(a)(25) added	5803
(m)(3) revised	10609
(c)(10) added	11463
(c)(4) and (6) revised; (c)(11) and (12) added	29373
(c)(6) revised	30319
(c)(6) revised; (h)(2) added	33545
(a)(11) revised; (a)(25) and (m)(3) removed	38490
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213.3314 (a)(8) and (15) revised; (a)(20) added	1737
(u)(2) revised	4881
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(a)(27) added	8027
(b)(1) and (2) added	11463
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(a)(18) added	16547
(a)(4) and (11) removed	23667
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(m)(2) and (q)(13) added	24975
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(a)(6) revised	11463
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(a)(13) revised; (a)(15) and (25) removed	38490
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213.3320 (a) revised	10609
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213.3327 (a)(1), (6) and (8) revised	10609
(a)(6) revised	16145
213.3328 (m) added	19197
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(a)(97) added....64634
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(a)(47) revised	48324
(i) and (k) removed	52372
(a)(49) and (50) added	56315
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(o) added	60113
(a)(17) revised; (a)(26) removed	61239
(a)(5) and (17) revised	64635
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(u)(1) added	20809
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(c)(6), (11), (12) and (14) revised; (u)(2) added	41265
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(q)(1) revised	64634
213.3314 (l)(5) added	37529
(a)(34) added	40174
(m)(21) added	41266
(m)(1) revised; (m)(22) added	43051
(a)(3) revised; (q)(14) added	44541
(a)(35) added	45283
(q)(15) added	48323
(v)(1) added	57115
(w) added	58151
(r)(3) added	60111
(a)(23) revised; (q)(8) added	63767
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(a)(52), (53), and (54) added	22355
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(a)(63) republished	48324
(k) added	56713
(a)(64) added	57683
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(a)(16) revised	59507
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(s)(1) added	35870
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(q)(8) added	44541
(c)(3) revised; (c)(15) added	45283
(c)(16) added	46506
(m)(5) revised	48324
(n)(18) and (p)(4) added	55189
(a)(40) and (41) added	56315
(r)(1) revised	57683
(a)(42) and (43) added	58151
(s)(2) added	61239
(c) (17) and (18), and (n)(19) added	63769
(n)(20) added	64335
(a)(44) and (n)(21) added	64634
(r)(11) correctly added	55596, 64636
(a)(6), (f)(10) and (q)(4) revised; (a)(38), (f)(13), (k)(4), (n)(3) and (16), (o)(9), (p)(3), and (r)(6) and (9) removed	64637
213.3317 (d) added	3827
(e) removed	64637
213.3318 (a)(1) revised	31604, 32251
(e)(1) revised	35141
(b)(6) removed; (b)(7) added	42301
(a)(6) added	46506
(a)(2) added	57116
(b)(8) added	60113
(f) added	60746
(a)(1) and (c)(4) revised; (a)(4) removed	64637
213.3319 (b) added	57683
213.3320 (a) added	42301
Removed	64637
213.3322 (b) added	27207
(a) revised	64637
213.3327 (a) (1) and (6) through (8) revised	3827
(y), (z), and (aa) added	34308
(e) revised; (bb) added	38552
(a) (1), (7), and (8) revised; (a)(11) added	43051
(e)(2) added	59506
(c) added	62140
(a) (1) and (7) revised; (a)(10) removed	64637
213.3328 (n) added	55189
(m) revised	62469
213.3329 Removed	52372
213.3330 (e) and (i) removed	64638
213.3331 Added	52372
(a)(5) added	54295
(a)(5) revised	54554
(e)(2) added	59506
(f)(3) added	61239
(m)(5) added	62139

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(m)(1) revised	63768
(j)(2) added	64335
213.3332 (y) (2) and (aa) added	34308
(e) revised; (bb) added	38552
(cc) added	40867
(dd) added	46506
(p) revised	57116
(t) revised	60745, 64636
(i) removed; (t) revised	64638
213.3333 (i) added	28989
(j) added	37793, 37964
(y) added	55595
213.3334 (a) revised	29845
213.3337 (a)(7) added	13533
(a)(7) revised	36448
(a)(20) added	38552
(a)(21) added	41266
(a)(22) added	45283
(c)(2) revised	48322
(a) (4) and (5) and (b)(2) revised; (a) (8) and (19) and (i) removed	64638
213.3339 (e) revised	9989
(a) and (b) revised	20809
(h) added	22356
(g) removed	64638
213.3340 (c) and (f) removed	64638
213.3341 (f) removed	64638
213.3342 (n) added	37964
(c) revised	48322
(t) added	53901
(u) added	56315
(l) revised	59506
(v) added	60746
(d) and (s) removed; (q) revised	64638
213.3344 (a) revised	55596
213.3346 (a) added	46505
(g) removed	64638
213.3348 (e) added	3827
(g), (r), (s) and (t) revised	61240
(c) revised; (o) removed	64638
213.3354 (c) revised; (g) added	41266
(a) revised; (d), (f), and (h) added	55595
(l) added	57116
(m) added	58152
(k) revised; (n) added	63769
213.3355 (a) revised	64638
213.3356 (g) added	55595
213.3357 (a) remove	64638
213.3359 (j) added	21759
(t) added	28516
(u) and (v) added	35825
(w) added	40866

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(q) and (r) revised; (x) added......48323
(y) added......55595
(t) remove......64638
213.3360 (e) added......9013
(e) revised......9175
(a) revised......15053
(a)(5), (g), (h), (i) and (j) added......32250
(a)(5) revised......33711
(c) revised......64638
213.3364 (m) added......55189
(i) revised; (j) removed; (n) added......61240
213.3366 Added......40867
213.3367 (e) added......43053
(f) added......53901
(g) added......56713
(c) and (f) revised......60112
(b) revised......64638
213.3368 (a)(5) revised......33711
(j)(2) correctly added...... 41265, 55596
(k) added......46505
(l) added......56107
213.3369 Added......59507
213.3379 Added......26409
213.3373 (g) added......39657
(d)(3) added......40215
(i)(1), (h)(1), and (a)(8) added....40867
(d)(4) and (j) added......41813
(j)(2) added...... 42679, 43053
(g)(2) added......44233
(a)(6) revised; (h)(2) and (k) added......45326
(e)(3) added......48322
(g)(2) revised......56713
(l)(1) added......61239
(a)(6) revised; (b), (c), (e)(2), and (f) removed......64638
213.3377 (c) revised......31455
(a) and (c) revised; (d) removed......45283
(k) added......45326
(l) added......62140
(b) revised; (e), (g), and (j) removed......64638
213.3382 (b) revised......35141
(e) revised; (i) added......47183
(e) revised; (k) and (l) revised.....60745
(l) revised......62140
(m) and (n) added......63379
(e) and (i) revised......64635
213.3384 (a)(61) added......5968
(a)(27) revised......16127
(a)(24) revised......18608
(a)(9) revised; (a)(62) added......19853
(a)(63) added......20809

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(j) introductory text amended; (a)(64), (j) (4) and (5) added; (k)(1) removed......22355
(b) (18) and (19) added......25313
(b)(20) added......25869
(b)(21) added......25870
(a) (6), (65), (66) and (b)(22) added......27207
(a)(19), (i)(5) and (7) revised......29845
(b)(23) added......28516
(d) revised......30831
(a)(62) revised; (l) added......33712
(a) (59), (66) and (f)(3) revised; (f)(6) removed......35826
(m) added; (f)(3) amended; (a) (10), (23), (26), (27), (60) and (f)(5) removed......36448
(i)(5) revised......37529
(i)(8) added......39657
(i)(9) added......41266
(b)(24) added......41813
(a)(66) and (b)(20) revised; (b) (6), (12), and (c) removed......43052
(i)(10) added......46506
(a) (67) and (68) added......58151
(a) (49), (55), and (66) removed; (n) added......59506
(a) (67) and (68) and (b)(14) revised; (a)(56) removed; (a)(69) added......60112
(i) (2) and (3) added......60746
(l)(2) revised; (l)(4) added......62139
(a) (3) and (35), (f)(4), (j)(2), and (k)(2) removed; (a) (31), (38), and (46), (d)(3), and (f)(3) revised......64638
213.3386 (e) added......60746
213.3388 (p) added......19853
(o)(2) added......19854
(a)(4) added......21759
(j)(3) added......25870
(a)(5) added......29845
(i)(2) added......32251
(o)(1) revised......32252
(p) introductory text revised; (p)(2) and (m)(2) added......33712
(a)(3) revised; (m)(3) added......35825
(a)(3) revised; (c)(5) added......38552
(g), (h), and (k) introductory texts and (h)(2) revised......40175
(g)(3) and (j)(4) added......40866
(l) revised......40867
(e)(3) and (k)(3) added; (j)(2) revised; (k)(1) removed......41814
(d) removed; (q) added......42302

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(o)(1) revised....................44234
(q) (2) and (3) revised....................44541
(b) introductory text, (b)(1) and (3) revised....................44542
(q)(4) added....................45893
Removed....................52372
213.3394 (a) (21) revised....................19854
(a)(47) and (f)(1) revised....................29846
(d)(4) added....................35142
(h)(8) added....................39085
(d)(5) added....................40175
(a)(26) revised....................48323
(a)(48) added....................46506
(a)(49) and (i)(6) added....................53902
(a)(17) revised....................57116
(a)(38) revised....................58152
(a)(50) and (f)(6) added....................59507
(a)(51) added....................60113
(h)(9) added....................63768
(a) (2), (22), (30), (39) and (46), (h)(4) and (i)(5) removed....................64638
213.3396 (a)(2) revised....................15053
(a)(2) revised....................55596
213.3399 (b) (5) and (6) and (c)(1) removed....................64639
294.702 Revised....................32252
295 Added....................13009
295.202 (a)(3) corrected....................14083
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295.401 (a) corrected....................14083
332.406 Revised....................61240
332.407 Removed; new 332.407 redesignated from 332.408....................61240
332.408 Redesignated as 332.407....................61248
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550.301 (m) added....................10317
550.312 (a) revised....................10317
550.371 (b)(3) revised....................23131
550.381—550.583 Undesignated center heading and text added....................10317
550.801—550.805 (Subpart H) Revised....................16127
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610.101 Revised....................3297
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713.204 (d) (6) revised....................11808
713.212 (b) revised....................11808
713.251 Undesignated heading and section revised....................11808
713.501 (b) (4) revised....................37530
713.512 Revised....................37530
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713.514 Revised....................19147
713.601—713.643 (Subpart F) Added....................11808
713.601 (d) revised....................37530
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752.104 (a) revised....................28516
754.105 Revised....................28516
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771.110 (b) (3) revised....................28516
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831.1301—831.1302 (Subpart M) Added....................29846
831.1401—831.1404 (Subpart N) Added....................29847
831.1501—831.1521 (Subpart O) Added....................52373
Correctly designated....................61240
890.301 (d)(1) revised....................52373
900.601—900.608 (Subpart F) authority cite added....................36990
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6.1 (a) amended; (c) added....................9773
6.6 Amended....................9773
9.6 (c) added....................9773
9.20 (f) added....................9773
180 Revised....................47163
213.3101 (b) revised....................30263
213.3102 (jj) added....................39952
(w) revised....................47167
(kk) added....................56204
213.3103 (e) and (f) removed....................21636
(g) added....................32735
213.3104 (f)(1) revised....................1474
(g) added....................27157
213.3105 (g)(1) revised....................1472
213.3106 (a)(7) added....................1471
(b)(7) removed; (d)(2) added....................3693
(b)(8) removed; (e) (1) and (2) added....................53703
213.3108 (a)(2) added....................20954
(a)(6) added....................25075
213.3110 (b)(1) removed....................55333
213.3112 (b)(3) added....................16306
(b)(3) revised....................18641

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(f)(3) added	25076
(a)(11) revised	27157
(i)(1) added	57490
213.3113 (f)(5) added	6913
(e)(3) revised; (e)(7) added	40453
213.3114 (h)(11) revised	1471
(h)(10) revised	30787
(c) removed; (j)(4) added; (l) heading revised	39951
(h) (11) revised	46287
(d) (2) revised	49525
(d) (1) revised	56873
213.3115 (d) heading and (l) revised	47167
213.3116 (e)(2) added; (k) removed	5793
(e) (3) added	19813
(a) (12) added	43431
(d) (6) added	47168
213.3121 Removed	32735
213.3123 Removed	59823
213.3127 (c) added	32116
213.3128 Heading revised	48990
213.3130 (a) and (b) removed	5793
(e) added	25075
213.3143 (b) removed	25990
213.3153 (c) (3) revised	16306
213.3158 Removed	55333
213.3161 Removed	55333
213.3162 Removed	59823
213.3182 (b)(13) and (23) removed	16306
(a) (6) and (7) added	34427
(b)(11) removed	35017
(a)(3) and (15) revised	36593
(a)(8) added	46287
(b) (3), (4), (8), (9), (10), (12), (17), and (25) revised; (b) (6) and (20) removed	53703
(b)(8) revised; (b)(24) removed	56204
(a)(9) added	57489
(a) (2) through (4), (6), (7), (13), (16), and (22) through (26) revised; (a)(19) and (29) removed; (a) (30) through (35) added	58541
(b) (8) revised	60137
213.3199 (h) added	2815
(i) added	16306
(f) added	27158
(o) revised	36592
(o) (1) revised	41947
(l) added	46287
(j), (k), and (v) removed	47167
(n) added	49526

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	43 FR Page
(h) removed	50158
(w) added	53704
(p) removed	55333
(r) removed	56204
(u) removed	57489
(g) and (q) removed	57490
(t) removed	59823
(x) added	60137
213.3201 Revised	34428
213.3202 (a) revised and (d) added	18159
(e) added	51753
213.3206 (c) added	51382
213.3207 (b) removed	51382
213.3208 Added	49526
213.3210 (c) added	35645
213.3215 Removed	47167
213.3216 (e) added	1472
(d) revised	4963, 21636
213.3228 Heading revised	48990
213.3231 Added	30263
213.3259 (b) added	21635
213.3272 (a) revised	43431
213.3274 (a)(1) revised	22668
(a) (1) revised	47168
213.3282 (b)(13) added	8149
(b) (14) through (16) added	16307
(b)(17) added	25989
(b)(18) added	35017
(b)(19) added	35645
(b)(5) revised	37979
(b) (20) through (22) added	39953
(b)(19 revised)	50158
(b)(23) added	51383
(b)(2) revised	53703
(b) (1) and (16) revised	53704
(b) (24) and (25) added	56204
(b)(26) added	59823
213.3284 Added	43431
213.3295 Added	3993
213.3303 (i)(6) added	2377
(d)(6) added	3253
(k) added	6913
(h) added	14001
(k) (1) and (2) added	16305
(a)(1) revised; (a)(20) added	21635
(k)(4) added	33676
(a)(5) added	36591
(a)(1) revised	45550
(k)(4) revised	57489
213.3304 (a)(33) added	2378
(c)(6) added	3693
(a)(10) and (r) added	12292
(a)(18) added; (a)(11) revised	14638
(a)(8) added	18642

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(a)(7) added.....22668
(h)(7) added.....31309
213.3305 (a)(31) revised.....1922
(a)(73) revised.....2378
(a)(59) removed; (a)(78) added...3897, 3993
(a)(79) added.....9782
(a)(47) revised.....16967
(a)(73) revised.....25417
(a)(79) revised.....27158
(a)(80) added.....45550
(a)(47) revised; (a)(81) added.....50157
213.3306 (a)(12) revised.....1471
(a)(98) added.....1473
(a)(37) revised.....2377
(a)(2) revised.....3253
(a)(98) revised; (a)(99) added.....6913
(a)(97) revised.....12292
(a)(100) added.....13491
(a)(52) added.....18641
(a)(44) added.....25076
(a) (2), (24), (25), and (26) revised.....31308
(a)(27) added.....39951
(b)(2) added.....48989
(a)(28) added.....48990
(a)(10) revised.....49525
(a)(98) revised.....51382
(a)(30) added.....56873
(a) (89) and (98) revised.....58539
213.3307 (a)(4) removed.....5793
213.3309 (a)(10) removed.....5793
(a)(4) added.....12291
(a)(1) CFR correction.....39069
213.3310 (y) added.....3993
(e)(3) added.....6913
(z) added.....6914
(z)(1) revised.....8777
(h)(2) added.....12845
(z)(2) added.....13491
(j)(5) added.....16305
(a)(11) revised.....20953
(l)(4) added.....25076
(v)(2) revised; (v)(4) added.....31309
(s)(8) revised.....36591
(j)(2) revised.....36592
(a)(4) CFR correction.....39069
(e)(3) revised.....45549
213.3312 (o)(2) added.....1921
(l) revised.....2377
(l) revised.....4586
(a)(16) removed.....5793
(m)(4) added.....6914
(a) (1) and (2) revised; (b)(4) added.....7609
(a)(51) added.....9782

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(a)(1) revised.....11689
(a)(28) added.....19337
(f) added.....22667
(o)(3) added.....28429
(a)(47) revised.....32735
(f)(2) added.....36591
(a)(27) added.....36592
(l)(13) added.....57490
(a)(47) revised.....58541
213.3313 (a)(42) added.....3253
(a)(42) revised.....4585
(t)(1) revised; (t)(3) added.....7199
(j)(2) added.....16306
(e)(3) revised.....25989
(q)(2) added.....26411
(p)(2) added.....30263
(e)(3) revised; (a)(3) and (e)(4) added.....31307
(a)(5) revised; (P)(3) added.....36591
(a)(35) added.....36592
(a)(4) added; (c)(9) removed.....50158
(a)(6) added.....51381
213.3314 (a)(11) added.....1471
(a)(9) revised.....1921
(q)(7) revised.....2815
(b)(3) added.....3693
(a)(3) revised.....4585
(a)(14) added.....4585
(a)(20) revised.....4963
(x)(1) added.....9782
(a)(9) revised.....12291
(r) (4) through (9) added.....12292
(f) added.....16305
(a)(20) revised.....16967
(a)(28) added.....19337
(n)(2) and (r)(10) added; (r)(1) revised.....22667
(a) (5), (14), and (34) revised (x)(2) added.....25417
(a)(6) added.....27158
(r)(11) added.....28429
(a) (10) and (11) revised.....29763
(a)(13) added.....30263
(m) introductory text revised.....31308
(w)(2) added.....31309
(r)(1) revised.....33676
(a)(22) added.....34427
(x)(2) revised.....36592
(a)(9) revised.....39070
(r)(12) added.....45550
(v)(1) revised.....48989
(r)(3) and (w)(2) revised.....49525
(r)(10) amended.....51381
(w)(3) added.....56874
(a)(34), (r)(1) and (2) revised.....58539

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(a)(13) revised	6913
(a)(1) revised	14637
(a)(58) revised; (a)(17) added	16967
(a)(28) and (k)(2) added	19337
(a)(56) revised	25076, 27775
(f)(2) revised; (f)(3) added	36592
(a)(8) and (22) revised	39070
(j) revised	45550
213.3316 (c)(19) added	1474
(h)(14) added	4963
(q)(9) added	6913
(f)(9) revised	7199
(h)(13) added	8777
(h)(15) added	9782
(h)(16) added	12291
(a)(45) and (h)(17) added	12292
(a)(8) and (n)(8) added	14001
(c)(20), (i)(3), and (s)(3), (4) and (5) added	16306
(s)(6) added	25989
(n)(10) added	25990
(a)(6) revised	27157
(k)(6) added	29763
(h)(7) and (n)(9) added	31307
(a)(3), (9), (10), and (h)(8) added	32115
(h)(9) added	33676
(a)(21) and (22) added	34427
(k) heading corrected	36043
(c)(21) and (h)(10) added	36591
(n)(11) added	45549
(c)(21) revised	49526
(c)(22) added	51382
(a)(6), (9), and (11) revised	56873
(r)(4) revised	58540
213.3318 (b)(8) revised	9781
(a)(7) added	25990
(a)(1) revised	39070
(a)(8) added	45549
(a)(1), (5), and (6) revised	56873
(b)(8) revised	58540
213.3322 (g) added	16967
(a) CFR correction	39070
213.3327 (a)(7) and (10) revised	2377
(a)(7) and (11) revised; (a)(8) removed	3994
(a)(1) removed; (a)(7) revised	25417
(a)(7) revised	51382
213.3328 (e) added	34427
(f) added	51383
213.3331 (a)(3) and (4) revised	1472
(c)(3) and (4) added	1922
(a)(6) added	2377
(c)(2) revised; (o)(2) added	3993

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(a)(7) revised	4963
(c)(5) and (s) added	6914
(c)(3) and (4) revised	6913
(n)(2) added	8149
(s)(1) revised	8251, 8777
(a)(1), (d)(1), (g)(1), and (r)(1) revised	9781
(g)(1) revised; (g)(2) added	12291
(c)(6) added	12292
(m)(6) added	14001
(a)(8) added; (e)(1), (j)(2), and (l)(1) revised	14637
(a)(9) added	14638
(c)(7) added	15607
(a)(10) and (t) added; (c)(7) and (m)(6) revised	20953
(n)(3) added	22001
(c)(3) revised	22667
(c)(4) revised	22668
(a)(7) revised	25076
(d)(2) added	25417
(b)(1) revised	25989
(b)(2) added	26411
(c)(4) revised	27157
(a)(1) revised	29763
(m)(7) added	31307
(k)(2) added	31308
(o)(3) added	31309
(c)(2) revised	32115
(h revised	32735
(c)(2) effective date corrected	34428
(a)(6), (k), and (m)(4) revised	35645
(o)(4) added	39070
(c)(8) added	33951
(m)(6) revised	39952
(f)(4) revised	45549
(h)(1) revised	45550
(m)(6) revised; (t)(2) added	48989
(l)(1) and (4) revised	49525
(c)(3) and (4) revised	49526
(i)(2) and (n)(1) revised	50157
(o)(5) added	51381
(a)(1), (m)(1) and (6) revised	58540
213.3332 (t) revised	4586
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